

No. 15625✓

United States
Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

GIUSTINA BROS. LUMBER CO.,
Respondent.

Transcript of Record

Petition to Enforce An Order of the National
Labor Relations Board

FILED

OCT 15 1957

PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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GENERAL COUNSEL'S EXHIBIT No. 1-M

United States of America
Before the National Labor Relations Board
Nineteenth Region

Case No. 36-CA-633

GIUSTINA BROS. LUMBER CO. and LOCAL
2611, LUMBER AND SAWMILL WORK-
ERS, AFL

AMENDED COMPLAINT

It having been charged by Local 2611, Lumber and Sawmill Workers, AFL, hereinafter referred to as the Union, that Giustina Bros. Lumber Co., hereinafter called the Respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act as amended, 61 Stat. 136, hereinafter called the Act, the General Counsel of the National Labor Relations Board, by the Regional Director for the Nineteenth Region, designated by the Board's Rules and Regulations, Series 6, as amended, Section 102.15, hereby issues this Amended Complaint and alleges as follows:

I.

Giustina Bros. Lumber Co. is a corporation organized and existing by virtue of the laws of the State of Oregon, having its principal offices and place of business in Eugene, Oregon, and is en-

gaged in the processing of lumber and lumber products.

II.

In the course and operation of its business, Respondent produces and ships in commerce among the several states of the United States, other than the State of Oregon, its products valued in excess of \$100,000.00 annually.

III.

The Union is, and at all times material herein has been, a labor organization within the meaning of Section 2 (5) of the Act.

IV.

The following unit is now, and at all times material herein has been, an appropriate unit within the meaning of Section 9(b) of the Act:

All employees at the Respondent's sawmill and planing operations in Eugene, Oregon, and the log dump and pond located at Springfield, Oregon, excluding office and professional employees, guards, and supervisors as defined in the Act.

V.

The Union is, and at all times material herein has been, the exclusive bargaining representative of a majority of the employees within the meaning of Section 9(a) of the Act in the unit as set forth in paragraph IV above for the purposes of collective bargaining.

VI.

The Union, on or about June 21, 1954, instituted

strike action against Respondent for economic objectives.

VII.

Respondent, by its officers, agents, and supervisors, while engaged in the operations described above in paragraphs I and II, has, since on or about July 28, 1954, engaged in activities which interfered with, restrained and coerced its employees, and is now engaging in such activities by:

(a) Urging and persuading its employees to desist from the strike in which they were then engaged, and to return to work under conditions to be mutually arrived at between Respondent and its individual employees, thereby by-passing their collective bargaining representative.

(b) Mailing to its employees who were then on strike a letter, a copy of which is appended hereto and marked Exhibit A.

(c) Refusing, on or about August 31, 1954, to bargain with the Union as the representative of the employees as detailed below.

(d) Unilaterally terminating, on or about September 2, 1954, the collective bargaining agreement then in force between the Union and the Respondent.

VIII.

Respondent, by its officers, agents and supervisors, while engaged in the operations described above in paragraphs I and II, has failed and refused to bargain in good faith with the Union as

the exclusive representative of all its employees in the unit described above by:

(a) Meeting with its employees on or about July 28, 1954, and urging them to return to work under conditions to be arranged between the employer and the employees, individually, without dealing directly with the Union, their representative, thereby discrediting and by-passing the Union.

(b) Refusing, on or about August 31, 1954, to bargain with the Union as the representative of its employees for the alleged reason that a question concerning representation existed, although Respondent was well aware at the time that no question concerning representation did, in fact, exist in that Respondent was party to a contract then in existence which barred any representation matter before the National Labor Relations Board.

(c) Notifying the Union, on or about September 20, 1954, that the collective bargaining agreement between the Respondent and the Union was terminated.

IX.

By the acts described above in paragraphs VII and VIII, and by each of them, and for the reasons therein set forth, Respondent interfered with, restrained and coerced its employees in the exercise of their rights guaranteed by Section 7 of the Act, and by all of said acts, and each of them, Respondent has engaged in, and is now engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

X.

By the acts described above in paragraph VIII, and by each of them, and for the reasons therein set forth, Respondent did refuse and fail to bargain with the Union as the representative of its employees in the appropriate unit as set forth in paragraph IV above, and thereby has engaged in, and is now engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

IX.

By the action and conduct of Respondent alleged in paragraphs VII and VIII above, and by such action and conduct the strike action of the Union was converted to an unfair labor practice strike, and was thereafter extended and prolonged until terminated by the Union on Jan. 19, 1955.

XII.

On January 19, 1955 the Union unconditionally requested of Respondent immediate reinstatement of the employees hereinafter named to their employment status with Respondent, Respondent then, and at all times since, refused and now refuses to reinstate said employees to their former or substantially equivalent employment:

Bearden, John Bellmore, Gene Blanton, Orville Bloom, Charles Bogart, G. P. Bowers, R. L. Breckwig, Brink, Wallace Brock, Brooks, Billy Brown, E. Brown, Denver Bruce, Melvin Bryant, Roy Buel, Frank Butenscheon, Brock.

John Carlson, W. G. Carpenter, George Casper,

Iley Casteel, Loyal Caudle, Glenn Clark, Ray Cook, Arthur Cornwall, Floyd Cox.

Frank Dietz, Ray Dilbeck, Otis Driggs.

Charles Eaton, David Edmon, Frank Elliott, Eylar Erickson, Joe Evoniuk.

Fitzpatrick, De Franks.

Jack Gandy, Gentry, Goldenberg, Gray, Edgar Greenhoot, Albert Gregg, Dale Gregg, Ross Gregg, Vernon Gregg, Gutbrod.

Martin Hagg, Halpain, Elmo Harmon, Ed Hassett, John Hedegaard, Bernard Hempel, H. T. Hendricks, W. R. Hicks, O. D. Hodge, William Hopson, Huber, Leroy Huffman.

Alvin Jackson, Arthur Jones.

Lawrence Keopka, Earl Kynard.

A. J. La Cross, Lambert, Delbert Lawson, John Lawson, Samuel Lebow, Charles Lemmer, Lloyd, Bommer Long.

Roy Markwell, William McNair, John Malpass, Robert Matthews, Walter Mayo, Clair Meade, H. M. Meadows, Vaughn Meskimen, Merlyn Mikkelsen, Virgil Miller, Fred Molinda, J. Moore, P. Mullin, Stanley Mortenson.

Earl Nash, Roy L. Noble, Roy Noble, Fred Nichols.

Harold Olsen.

William Palmer, Henry Pappel, Richard Parent, J. H. Paris, Paul Parker, P. Peterson, John Phillippe, John Pickett, Leonard Pike, Maurice Potter, Clarence Price.

Glen Rasmussen, Richard Reinking, Reed, Verlin Rice, James Richards, Donald Roupe.

Robert Scarlett, Thurman Scevins, Scheid, Elmer Schlafer, Harold Sederlin, Anthony Smith, Lewis Smith, Snyder, Dean Sparks, Date Strehlow.

Tribe.

Vladik.

O. D. Walker, Al Warren, Darwin Watts, Eugene Watts, Ed Williams, James Williams, Joe Williams, Charles Windham, Louis Wright.

Joe Yates, Harold Yancy, Richard Yoder.

Alex Zarzan, Ed Zietner, Johnny Zybach.

XIII.

By the action and conduct of Respondent in terminating and discharging its respective employees named in paragraph XII above, in the manner and for the reasons stated in paragraphs VII, VIII and XI above, Respondent discriminated in regard to the tenure of employment of said employees, discouraged membership in the Union and discouraged concerted action and participation in unfair labor practice strike action, and has been and is engaging in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act.

XIV.

The activities of Respondent as set forth and described above in paragraphs VII through XIII, occurring in connection with the operations of Respondent as set forth and described in paragraphs I and II above, have a close, intimate, and sub-

stantial relation to trade, traffic and commerce among the several states of the United States, and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

XV.

The aforesaid acts of Respondent constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1),(3) and (5), and Section 2(6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, on this 19th day of April, 1955, issues this Amended Complaint against Giustina Bros. Lumber Co., the Respondent herein.

[Seal] THOMAS P. GRAHAM, JR.,
Regional Director, National Labor Relations Board,
19th Region.

EXHIBIT A

Giustina Bros. Lumber Co.

Eugene, Oregon

5-August 1954

To: The Employees of Giustina Bros. Lumber Co.

Operations at our plant in Eugene were resumed July 29, 1954. Some of you have not returned to work. We plan to continue our Eugene operations. If you have not returned to work by Monday, August 9, 1954 to start the regular day shift, it will

be considered that you have severed your employment and we will look to others to fill the jobs.

Yours very truly,

GIUSTINA BROS. LUMBER CO.

N. B. GIUSTINA

N. B. Giustina

NBG/gg General Manager

GENERAL COUNSEL'S EXHIBIT No. 1-Q

[Title of Board and Cause.]

ANSWER

Giustina Bros. Lumber Co., for answer to the amended complaint herein, admits, denies and alleges as follows:

I.

Admits paragraphs I, II, III and IV.

II.

Answering paragraph V, Respondent admits that prior to June 21, 1954, union was a collective bargaining representative of the employees within the units set forth in paragraph IV. Save and except as expressly admitted herein, Respondent denies each and every allegation contained in said paragraph.

III.

Admits paragraph VI.

IV.

Answering paragraph VII, Respondent admits that it mailed a copy of the letter attached to the complaint as Exhibit A. Save and except as expressly admitted herein, Respondent denies each and every allegation contained in said paragraph.

V.

Answering paragraphs VIII, IX, X and XI, Respondent denies each and every allegation contained in said paragraphs and the whole thereof.

VI.

Answering paragraph XII, Respondent admits that it has refused to reinstate certain persons to their former employment. Save and except as expressly admitted herein, Respondent denies each and every allegation contained in said paragraph.

VII.

Answering paragraphs XIII, XIV and XV, Respondent denies each and every allegation contained in said paragraphs and the whole thereof.

And for a separate answer to the amended complaint herein, Respondent alleges that after July 15, 1954, a question existed as to whether Local 2611 represented a majority of the employees within the bargaining unit as set forth in paragraph IV of the amended complaint; that a group of employees filed their petition with the National Labor Relations Board asking that an election be held to decertify said local union No. 2611 as a collective bargaining agency of said employees;

that after August 11, 1954, the majority of the employees in said bargaining unit worked regularly at Respondent's sawmill and planing operations in Eugene, Oregon, and the log dump and pond located at Springfield, Oregon, even though Local 2611 at all said times and until January 19, 1955, maintained a picket line at said sawmill and planing operations.

And for a further answer to the complaint herein, Respondent alleges that the strike called by Local Union No. 2611 was a breach of the labor agreement between Respondent and said local; that following said breach, Respondent gave notice of termination of notice of said contract and that said strike and picket line maintained by Local 2611 was in violation of the terms of said collective bargaining agreement and constituted an unfair labor practice within the meaning of the Act.

Wherefore, having fully answered the amended complaint herein, Respondent prays that the same be dismissed and for such further relief as may be appropriate in the premises.

/s/ RICHARD R. MORRIS,

Attorney for Respondent.

Duly Verified.

GENERAL COUNSEL'S EXHIBIT No. 1-R

[Title of Board and Cause.]

AMENDED ANSWER

Giustina Bros. Lumber Co., for amended answer to the amended complaint herein, admits, denies and alleges as follows:

I.

Admits paragraphs I, II, III and IV.

II.

Answering paragraph V, Respondent admits that prior to June 21, 1954, union was a collective bargaining representative of the employees within the units set forth in paragraph IV. Save and except as expressly admitted herein, Respondent denies each and every allegation contained in said paragraph.

III.

Admits paragraph VI.

IV.

Answering paragraph VII, Respondent admits that it mailed a copy of the letter attached to the complaint as Exhibit A. Save and except as expressly admitted herein, Respondent denies each and every allegation contained in said paragraph.

V.

Answering paragraphs VIII, IX, X and XI, Re-

spondent denies each and every allegation contained in said paragraphs and the whole thereof.

VI.

Answering paragraph XII, Respondent admits that it has refused to reinstate certain persons to their former employment. Save and except as expressly admitted herein, Respondent denies each and every allegation contained in said paragraph.

VII.

Answering paragraphs XIII, XIV and XV, Respondent denies each and every allegation contained in said paragraphs and the whole thereof.

And for a separate answer to the amended complaint herein, Respondent alleges that after July 15, 1954, a question existed as to whether Local 2611 represented a majority of the employees within the bargaining unit as set forth in paragraph IV of the amended complaint; that a group of employees filed their petition with the National Labor Relations Board asking that an election be held to decertify said local union No. 2611 as a collective bargaining agency of said employees; that after August 11, 1954, the majority of the employees in said bargaining unit worked regularly at Respondent's sawmill and planing operations in Eugene, Oregon, and the log dump and pond located at Springfield, Oregon, even though Local 2611 at all said times and until January 19, 1955, maintained a picket line at said sawmill and planing operations.

And for a further answer to the complaint herein, Respondent alleges that the strike called by Local Union No. 2611 was a breach of the labor agreement between Respondent and said local; that following said breach and on or about September 2, 1954, Respondent mailed to Union a letter, a copy of which is attached to General Counsel Exhibit No. 2, marked Appendix K; that on or about September 13, 1954, Local Union 2611 mailed to Respondent a letter, a copy of which has been introduced in evidence as General Counsel Exhibit No. 4; that on or about January 13, 1955, Respondent mailed to Union a letter, a copy of which is attached hereto, marked Exhibit No. 1; that on or about January 18, 1955, Union mailed to Respondent a letter, a copy of which is attached hereto, marked Exhibit No. 2; that on or about January 25, 1955, Respondent mailed a letter to the Federal Mediation and Conciliation Service, a copy of which is attached hereto, marked Exhibit No. 3; that on or about January 25, 1955, Respondent mailed to the Oregon Board of Arbitration a letter, a copy of which is attached hereto, marked Exhibit No. 4; and that said strike and picket line maintained by Local 2611 was in violation of the terms of said collective bargaining agreement and constituted an unfair labor practice within the meaning of the Act.

Wherefore, having fully answered the amended complaint herein, Respondent prays that the same

be dismissed and for such further relief as may be appropriate in the premises.

/s/ RICHARD R. MORRIS,
Attorney for Respondent.

Duly Verified.

EXHIBIT No. 1

(Copy) Giustina Bros. Lumber Co.
Eugene, Oregon

Local #2611, LSW-AFL January 13, 1955
480 Horn Lane, Eugene, Oregon
Attention: Mr. Leland James Howden

Gentlemen:

Under date of 2 September 1954 we notified you that a contract between you and Giustina Bros. Lumber Co. dated 8 May 1953 covering our saw-mill and planing operations in Eugene, and the log dump and pond in Springfield, was terminated. Thereafter you wrote us that you did not consider the contract at an end.

In order that there may be no doubt, you are hereby notified that we reaffirm our notice of termination of that agreement.

Yours very truly,

GIUSTINA BROS. LUMBER CO.

Sam E. Hughes.

SEH/gg

cc: Mr. Richard Morris
Attorney-at-Law

EXHIBIT No. 2

(Copy)

Local Union No. 2611

480 Horn Lane,

Eugene, Oregon

Giustina Bros. Lumber Co.

January 18, 1955

P. O. Box 989, Eugene, Oregon

Gentlemen:

In reply to your letter of January 13, 1955 in which you reaffirm your position of September 2, 1954.

We reaffirm our position stated on September 13, 1954. The collective bargaining agreement can be terminated only in accordance with the provisions of Article XIII. The agreement therefore remains in effect.

Yours truly,

/s/ LELAND JAMES HOWDEN,

Leland James Howden, Business Agent, Local
Union No. 2611, Lumber & Sawmill Workers.

GENERAL COUNSEL'S EXHIBIT No. 2

[Title of Board and Cause.]

STIPULATION OF THE RECORD

It Is Hereby Stipulated and Agreed by and between Giustina Bros. Lumber Co., hereinafter called Respondent, acting by and through Richard R. Morris, its attorney, and Local 2611, Lumber and Sawmill Workers, AFL, hereinafter called the Union, acting by and through Donald S. Richard-

son, its attorney, and the General Counsel of the National Labor Relations Board, acting by and through Patrick H. Walker, its Counsel, as follows:

I.

Upon charges filed by the Union on August 2, 1954, and served upon the Respondent on August 5, 1954, and upon amended charge filed on September 15, 1954 and served upon the Respondent on September 16, 1954, and a second amended charge filed January 27, 1955 and served January 29, 1955, receipt of each of which is hereby acknowledged by said Respondent, the General Counsel of the Board, on behalf of the Board, by the Regional Director for the Nineteenth Region of the Board, acting pursuant to authority granted by Section 10(b) of the National Labor Relations Act, as amended, herein called the Act, and pursuant to the Board's Rules and Regulations, Series 6, as amended, Section 102.15, duly issued a Complaint and Notice of Hearing thereupon on December 20, 1954 against the Respondent herein, and an amended complaint and further Notice of Hearing dated April 19, 1955, receipt of each of which is hereby acknowledged.

II.

Giustina Bros. Lumber Co. is a corporation organized and existing by virtue of the laws of the State of Oregon, having its principal offices and place of business in the City of Eugene, Oregon, engaged in the processing of lumber and lumber products.

III.

In the course and operation of its business, Respondent produces and ships in commerce among the several states of the United States, other than the State of Oregon, its products valued in excess of \$100,000.00 annually.

IV.

Respondent is and at all times material herein mentioned has been an employer within the meaning of Section 2(2) of the Act and engaged in interstate commerce within the meaning of Section 2(6) and (7) of the Act.

V.

The Union is and at all times material herein has been a labor organization within the meaning of Section 2(5) of the Act.

VI.

The following unit is now and at all times material herein has been an appropriate unit within the meaning of Section 9(b) of the Act:

All employees at the Respondent's sawmill and planing operations at Eugene, Oregon, and the log dump and pond located at Springfield, Oregon, excluding office and professional employees, guards, and supervisors as defined in the Act.

VII.

On or about the 8th day of May, 1953 Respondent and the Union entered into a revised agreement, a copy of which is attached hereto and marked Appendix A.

VIII.

At all times material herein Respondent has been a member of Willamette Valley Lumber Operators Association, herein called Association, and the Union has been affiliated with Willamette Valley District Council of Lumber and Sawmill Workers, herein called Council.

IX.

Association is a corporation organized under the laws of the State of Oregon relating to non-profit corporations. Its members are limited to those who are engaged in a forest products industry. From time to time members of the Association delegate limited authority to a committee composed of members of the Association to negotiate with the bargaining agents of their respective employees.

X.

Council is an unincorporated association of local labor organizations, including the Union, and is chartered by the United Brotherhood of Carpenters and Joiners of America, and at all times material hereto has been and is now engaged in promoting and protecting the interests of employee members of its constituent local unions, more particularly it has represented its constituent locals in labor disputes and in collective bargaining with Association and with the members of Association.

XI.

On or about February 10, 1954 Council executed

and delivered to Respondent a letter. On or about February 20, 1954, by letter, Respondent replied. On or about March 10, 1954 the Union wrote and delivered to Respondent a further letter. On April 9, 1954, Council wrote and delivered to Respondent a letter to which Respondent replied by letter on April 13, 1954. A copy of each of the above described letters is annexed hereto, marked respectively Appendix B, C, D, E, and F, and by reference incorporated herein. Negotiations between a committee of Association and Council thereupon occurred on April 28, June 17, July 13 and August 4, 1954.

XII.

On or about June 21, 1954, the Union undertook strike action and picketing against Respondent in furtherance of its wage demands.

XIII.

On or about July 24, 1954, various non-supervisory employees of Respondent employed in the unit set forth above, met at the home of one of said non-supervisory employees. About 35 non-supervisory employees attended the meeting. At that meeting the employees present discussed petitioning the Union for a meeting and seeking to have the bargaining rights returned from the Council to the Union, and failing in achieving that purpose to try to return to work at the plant of Respondent even though pickets were maintained at the plant.

A meeting of the members of the Union was

held the night of July 28, 1954. About ten of the above non-supervisory employees met on July 28, 1954, before the Union meeting. At that meeting this group again discussed the question of withdrawing authority from the Council, and if they were unsuccessful, they would go back to work.

At that Union meeting no action was taken to return the bargaining rights to the Union. Following the Union meeting some of the above non-supervisory employees of Respondent in the bargaining unit met outside the Union Hall to discuss their problems. One of said employees suggested that they move the meeting to the parking lot of Respondent. This group of said employees then went to the parking lot of Respondent. When they reached the lot they found that the shop was open. The shop had been used in the past for employee meetings. The group then went into the shop. Officers of Respondent, President Nat Giustina, Ehrman Giustina, and Sam E. Hughes, were then invited to the meeting and attended part of it. No objection was raised by Respondent to holding the meeting on the property of Respondent.

The meeting was attended by at least 22 employees. The number present varied from time to time as various employees came to and left the meeting.

The meeting was opened by Robertson, a non-supervisory employee in the bargaining unit. The following material was spoken by the individual after whose name the comments appear. Where the

speaker is unidentified, he is not an officer or supervisory employee of Respondent.

Robertson: You know why you are here. I called the bosses and they'll come down and you can ask them anything you want.

Robertson then called Hughes, and Hughes, Nat and Ehrman Giustina came to the meeting.

Robertson: Before we start, I think there are a few here who shouldn't be here. Sam and Ehrman, will you come over here a minute?

Robertson asked Hughes if he would talk to the men. Hughes, not recognizing some of the men, said:

Hughes: Were you boys invites?

Louis Wright: Sure, Johnson invited us, didn't you, Johnson?

Johnson: Yeah, I invited them.

Hughes: Was everybody at the Union meeting invited?

Wright: No, if you guys had just had every guy invite one more guy you would have had twice this representation.

Hughes: Before we go any further, I want to state that it is my opinion anyone has a right to present his individual grievance providing the collective bargaining agent has had an opportunity to be present and I'm wondering if Howden knows about this meeting and has had an opportunity to be present if he desires.

Unidentified: He could have come if he had wanted to.

Zybach: Was Howden invited?

Hughes: I don't know. Was he?

Robertson: I suggest we start it off by letting some of the fellows talk who are new to this idea and haven't been thinking about it very long.

Hughes: Have you men got anything to say?

(No answer.)

Hughes: Very well. I sincerely hope that none of you have come here with the intention of just listening to what is going on and then reporting it back to the hotshots. There's an operation up near Bellfountain where they had a couple of men who ran to the District Council every time they heard something; they have a name for those fellows, they call them rats. I hope none of you are going to be called rats by the fellows you work with. Now, if any of you want to leave I'm sure it will be satisfactory to everyone else. Well, I'm sure I don't need to tell you what will happen to you in the future.

Robertson: Anybody who don't want to go to work (waving at the door).

Hughes: Very well, we will assume everyone here feels as you do. Now, in the first place, fellows, I'm not here to knock your Union. I think its done the people of Willamette Valley a lot of good, and I know that the people I work with (indicating Nat and Ehrman Giustina) feel the same way. We are not out to break the Union. I cannot state that too emphatically — we do not want to break the Union. We think its done a fine job and

we want it to keep on doing it. We have a lot of respect for it. Nat and Ehrman have belonged to it; and their father belonged to it before them a lot longer, I imagine, than most of you fellows have.

But while the Union leadership has a very worthwhile duty to perform, it also has a tremendous responsibility—tremendous responsibility. In fact, I wouldn't be in their shoes for anything in the world. Any time two or three men can sit up there and dictate the lives of . . . thousand men, they have a tremendous responsibility. Any time two or three men can tell that many thousand men whether they can work to feed their families or not, they have a terrible responsibility.

Now, while these two or three men up there in this position of power can do a mighty worthwhile job, they also have to be conscious of their responsibility. They have to do this job right. At the present time, they have all these thousands of men sitting on their backsides with their families going hungry on a strike that is entirely uncalled for. This strike is costing you men . . . dollars a day and for what? Not for twelve and one-half cents an hour. All the companies that have settled thus far have settled for five cents or less. In fact, actually, most of them have settled for nothing. Take Woodard's down here at Cottage Grove. All they did was to lower wages three cents and then give a five cent raise.

Now, that's just like taking a quarter out of this

pocket and putting it into this pocket (demonstrating . . .). You could do that, I can do it. Our management could do that. We could lower your wages five cents and then offer you a five cent raise and have you back on the job. But we are not going to do that. We are going to be honest with you. We are not going to make an offer, and we are not going to try to make you think you are getting something when you are actually getting nothing. That is not the way we operate. We are going to lay the cards flat on the table.

We realize the Union has been telling you how the lumber market has been going up and how we are making money hand over fist and this and that. But let me tell you, fellows, this lumber market is no cinch. Sure, lumber has gone up but only in a few kinds of lumber. Green has gone up; now that the strike's on, but what about before that. You boys saw it. We had to pull some kinds of logs over in the corner of the pond. We just couldn't afford to saw them. Now take the stuff we make, your high grade finish. You saw how it piled up in the sheds. There was just no market for it. In the stuff we make, the price stayed down.

The people who are really doing all right now are the little gypos like Blue River across the street. They've been shut down for a long time but they began running again the morning the strike started. They've even put on a night *shirt* now. If we were going to do business that way, start and stop depending on the market, why maybe we could

see our way clear to make a wage increase. We think its more important to be able to keep a good crew like we have by paying a fair wage and providing steady work. Most of you men must feel the same way or else you'd be working for some of these gypos that stop and start with the market.

Now, fellows, I know that I've done a very poor job in informing you of the real situation we're in. I know that management, in general in the Willamette Valley has done an awfully poor job of keeping you informed as to your individual rights and liberty to do as you want.

Remember, as I've told most of you while you were on picket duty, generally a man has a right to strike or not to strike as he sees fit, to engage in concerted activities such as a strike or refrain from them, and neither the Union nor the employer can discriminate against the man for his actions. The Taft-Hartley Act is your protection and provides this and is still the law of the land. In the first place, the Union cannot keep you from working if you want to.

Nat Giustina: Just a minute, Sam. I would like to put a word in here. Men, you have your individual rights. The Constitution of the United States is a lot stronger than any union. This is still America.

Unidentified: Up at the Union meeting awhile ago, we thought it was Russia.

Unidentified: Yes, they wouldn't let us have the

floor, only for five minutes at a time, but they let Kraal talk about 30 minutes.

Nat Giustina: You have the Constitution of the United States to back you up. Your forefathers and mine came to this country and fought for these rights. Mine might have got here a little late but they all fought for the individual rights of the people. That's why I'm a Republican. I'm probably a black one, too, because I'm for Taft.

It is the rights of the individual that we think is important. Your rights as a man to work where and when you want to. No union can make you go out on strike. On the other hand every man also has the right to strike if he wants to. Any individual working in the mill can go on strike and we can't do one thing about it. He can tell us to go climb a tree. But if he didn't want to strike, nobody can make him. He has a right as an individual to keep on working.

Alldrit: But what about the strike vote?

Hughes: That's a good point, Jack. I'm glad you brought it up. And here I want to say that I don't have much respect for the strike vote. The vote only carried by a small majority.

Alldrit: Two to one.

Hughes: The strike vote carried by a small majority and only about 20% of the men in this plant voted for the strike. Now let's look at that for a minute, say there were about 450 men in the plants represented by Local 2611 that were either union members or eligible for membership. Only

122 men voted on the strike and out of this only 78 voted for the strike and 44 voted against it. That's about 63% for a strike and 37% against it. Now, 82 men from the plant voted and if they voted in the same proportion as I've explained then about 52 voted for the strike and 30 were against striking. This company had about 250 employees represented by a union when the strike started. The 50 odd who we assume voted for the strike are only 20% of our crew and I refuse to believe that this 20% represents the wishes and desires of the 250. However, as far as the company is concerned, we don't have any hard feelings toward anyone here in the plant and as far as I'm personally concerned, I still have a lot of respect for Howden. I think he has tried to do a good job.

Bloom: But if us guys go back to work now, what happens when the strike is over? If you hire the union guys back, what if they won't work with us?

Nat Giustina: If you think we're tough on this strike, try that one.

Unidentified: If we go back to work, we're through with the Union.

Hughes: No, you're not. The Act requires that you tender the periodic dues and initiation fees uniformly required of——

Nat Giustina: Just a minute, Sam, define the word tender.

Hughes: To tender your dues is to offer to pay them. Now all you have to do is to walk up to one

of the committee and offer your money to him. If he doesn't take it, the union can't kick you off the job. In fact, if you had tendered your dues and we fired you because the Union told us to, we would get into trouble. You could sue us for plenty. Orville (turning to Orville Bloom), I'm not going to try to change in a few minutes the idea that the Union has spent years getting into your head but I tell you that we can do absolutely nothing.

Bloom: If we go back now, how about the pay? Would we get the same rate of pay we're getting before the strike?

Nat Giustina: Now, just a word here about pay. The wages, hours and working conditions in effect at the start of the strike would be maintained. Say down here working on the chain we've got a man who builds straight loads and puts stickers in where they belong. Say he works hard and builds a good, solid load. We would like to give that man a raise in pay. He's earned it. But, with the Union in, we can't. You know why? Because if we do we've got to give this other guy working on up the chain, who builds a load that falls down every time you try to pick it up, a raise too. The Union tries to make you all the same like sheep. We would like to pay you men what you're worth, but we can't.

Bloom: What about the other rights and advantages we've gained through the Union? Do we still have them if we go back to work?

Unidentified: Well, the veneer plant is working.

Nat Giustina: Now, just a minute. Just a minute. Look at the veneer. All right, they've got everything you've got, except seniority, and they don't want that. The best man gets the job and they're happier that way. Seniority is out.

Men, you've got the Taft-Hartley Act to protect you. All the Taft-Hartley Act is is an improvement on the Wagner Act. The only difference is this. Where the Wagner Act protected you from the s.o.b. employer, the Taft-Hartley Act protects you from the s.o.b. employer and the s.o.b. union boss.

Unidentified: Well, what we waiting for? Let's get to doing something here.

Unidentified: Why doesn't the District Council want us to go back to work?

Hughes: Now here's what the District Council is worried about. They're not thinking about you men. All they're worried about is that four dollars a month.

Eight hundred dollars a month, nine hundred dollars. That's right. All they're worried about is their nine hundred dollars a month. That's what they take out of this plant. They're just thinking about their jobs. You'd do the same thing probably, if you were in their shoes. All they're worried about is their jobs.

Unidentified: All we're thinking about is our jobs. If they can think about their jobs, why can't we think about our jobs.

Nat Giustina: That's it. That's the whole thing right there.

Bartunek: Why can't we withdraw from the District Council.

Marvin: Or better still, why can't we form a new union all our own with just us men?

Hughes: Now, just a minute. Pardon me, Nat, let me say a few words just here. This is not the time nor place to discuss anything like that.

Unidentified: Well, when do we start? Let's get this thing started.

Hughes: Okay. We will be in the veneer plant for 15 to 20 minutes if you want to get in touch with us.

Robertson: All right now. How many of you guys want to go back to work in the morning. Some of the boys thought it would be better to wait till Monday. But first, how many of you guys want to go to work? The first thing we want to do is decide who ought to be in this bunch and who hadn't. Now you four boys (indicating 4 men), you four fellows I think just came down to, well, to start trouble.

Wright: Like hell. We're just looking out for our jobs same as you guys are. We want to go back to work as anybody. Only thing is we ain't had time to think this thing over like you guys have. You been thinkin' this over for 3 or 4 days—maybe longer; and we just heard about it a little while ago. When Johnson came down and asked us if we wanted to come out and hear what you had to say was the first time we'd heard about it. We was of the understanding that we could just listen to what

was said, and if we didn't want no part of it, we didn't have to take it. Ain't that right, Johnson?

Johnson: Yeah. I asked them to come down and that was my understanding.

Bloom: That's right. Tonight's the first we'd heard of it. We were of the understanding that if we didn't like it we didn't have to take it.

Robertson: If you guys don't like it, there's the door.

Wright: We want to hear what you've got to say. We're interested. Sure. But we just don't want to take any hasty action. You know yourself that never is right.

Robertson: Okay. All that wants to go to work raise their right hands.

Unidentified: Okay. Now we know we're gonna go to work. Now, when? Do we want to go to work in the morning or wait till Monday.

Unidentified: I think we'd better wait till Monday. Give the guys a chance to think it over.

Robertson: Well, you guys that ain't ready to go to work yet might as well leave then.

Wright: But us guys want to go to work just as bad as you guys do. We just ain't heard all about it yet.

Robertson: Okay. Everybody wants to go to work. Now let's have a show of hands. How many wants to go to work Monday? Okay, how many wants to go to work in the morning? Okay, so we go to work in the morning. Is that agreed?

Unidentified: I'll tell you, Robertson. Let's have

the men who want to go to work Monday to step over here.

Robertson: Okay. All the men who want to go to work in the morning step this way.

Unidentified: No, I said that wants to go to work Monday.

Robertson: All the men that want to go to work in the morning come over here. Okay, so we go to work in the morning. Now let's go see the bosses.

Thereafter Hughes and Nat and Ehrman Giustina were contacted in the veneer plant and requested to return to the shop which they did.

Robertson: Us boys have talked it over and most of us want to come back to work if the company will let us. Tomorrow morning.

Nat Giustina: Well, there's plenty of work, we'll see you in the morning when the whistle blows.

XIV.

The names of the persons set out in paragraph XIII above who are not otherwise identified are hereby identified as follows: Robertson, Louis Wright, Johnson, Zybach, Alldrit, Bloom, V. Bartunek and Marvin Bartunek were production or maintenance employees of Respondent. Howden is Business agent of the Union and Kraal is executive secretary of Council.

XV.

July 29 a sufficient number of strikers reported for work to enable Respondent to resume partial operations. On or about August 5, 1954, by a letter bearing that date, a copy of which is appended

hereto and marked "Appendix G," was sent by the Respondent by mail to all employees who had gone on strike and not returned. Thereafter, more employees who had been on strike returned to work and with new employees have continued Respondent's operations.

XVI.

On or about August 25 a petition for decertification was filed by an employee, Glenn L. Winey, employed in the unit as set forth above, which petition was docketed as Case No. 36-RD-75. The petition was dismissed by the Regional Director on December 6, 1954 by letter, a copy of which is appended hereto marked Appendix H, and made a part hereof. Thereafter petitioner appealed the action of the Regional Director to the Board. On March 8, 1955, the office of the Secretary of the Board, by letter, advised petitioner and others of the action of the Board, a copy of which letter is appended hereto marked Appendix I, and made a part hereof. In each of said letters the reference to "Glenn L. Winery" refers to one and the same as petitioner.

XVII.

On or about August 31, 1954 representatives of the Union presented to Respondent a proposal for strike settlement, a copy of which is appended hereto and marked Appendix J. At the time of presenting the proposal the following statements were made by individuals after whose names the comments appear:

Hughes: Is it your desire to negotiate on this (referring to paper which had been thrown on table by Howden).

Howden: Yes, we want to talk about the Governor's paper.

Hughes: This is the purpose of your asking to meet? (Referring to paper.) It isn't applicable in our case. In order to bring any of you fellows up to date, I would like to tell you that under date of August 26, 1954 this company received notification from the NLRB that a petition for decertification of Local 2611 as the collective bargaining agent for the employees in the plant had been filed. (Then read excerpts from letter of Mr. Robert Wiener of NLRB pertaining to petition.) I believe you (indicating Howden) have also received notification of this petition.

Howden: Yes, I have.

Hughes: Inasmuch as your position as bargaining agent has been questioned by the employees working in this plant and we have been officially notified of this by the NLRB, until that question is resolved we do not feel it is proper to negotiate with you.

Howden: Then you won't negotiate with us?

Hughes: Your status as bargaining agent has been questioned by the employees working in this plant, it is claimed that you no longer represent the majority of men working in this plant, and until that question is resolved we feel it is improper for us to negotiate with you.

Howden: If there wasn't a question about us being bargaining agent, would you negotiate with us?

Hughes: Of course.

XVIII.

On or about September 2, 1954 a letter, a copy of which is attached hereto and marked Appendix K was mailed from the Respondent to the Union.

XIX.

On or about January 19, 1955 the Union terminated its picketing and strike action against Respondent, and on said date delivered Respondent a letter, a copy of which is appended hereto and marked Appendix L. On January 21, 1955 about, and January 22, 1955, the Union delivered to Respondent further letters, a copy of each of which is appended hereto and marked Appendix M and N, respectively. On January 22, 1955 the Respondent replied by letter, a copy of which is appended hereto and marked Appendix O.

XX.

This stipulation may be received in evidence, to have the same force and effect as though the facts herein and the documents annexed hereto had been testified to or identified by competent witnesses, and the documents annexed hereto may be received in evidence without further identification. It is the further intention of the parties that this stipulation will not foreclose any party from calling witnesses to testify concerning any further facts material to the issue raised herein.

In Witness Whereof the parties hereto have caused this stipulation to be executed by their duly authorized counsel this 9th day of May, 1955.

GIUSTINA BROS. LUMBER CO.,

/s/ By RICHARD R. MORRIS,
Its Attorney.

LOCAL 2611, LUMBER AND
SAWMILL WORKERS, AFL.,

/s/ By DONALD S. RICHARDSON,
Its Attorney.

/s/ PATRICK H. WALKER,
Counsel for the General Counsel of the National
Labor Relations Board.

APPENDIX "A"

Agreement

This Agreement, made and entered into this 31st day of March, 1943, revised the 3rd day of November, 1949, and the 8th day of May, 1953, by and between Giustina Bros. Lumber Co., of Eugene, Oregon, hereinafter called the "Company" and Lumber and Sawmill Workers, Local Union No. 2611 of Eugene, Oregon, affiliated with the Willamette Valley District Council of Lumber and Sawmill Workers and chartered by the United Brotherhood of Carpenters and Joiners of America, an American Federation of Labor affiliate, hereinafter called the "Union," through their authorized agents, Witnesseth:

* * * * *

Article I.

The Company agrees to recognize the Lumber and Sawmill Workers Local Union No. 2611 as the sole bargaining agency in the sawmill and planing operations of Giustina Bros. Lumber Co. located in Eugene, Oregon, and the log dump and pond located in Springfield, Oregon, and that it will bargain collectively with those members who are employees of the Company as a whole.

* * * * *

Article VIII.

Wages

Wages shall continue subject to the right of either party to request a general wage change by giving the other party written notice of its desire for such general wage change. Negotiations shall commence within fifteen (15) days from the date the notice is received.

Article IX.

Strikes and Lockouts

The Company and the Union agree that the grievance procedures specified hereinabove in Article II are adequate to provide a fair and final determination of all grievances arising under the terms of this agreement.

Therefore, during the life of this agreement no strike shall be caused or sanctioned by the Union or any of its members and no lockouts shall be entered upon by the Company until every peaceable method of settlement of the difficulties involved, as provided hereinbefore in Article II, shall have been

tried and the parties hereto have been unable to resolve their differences.

If, after exhausting all steps in the grievance procedure, the Company and the Union are unable to reach a mutually satisfactory solution to the matter at issue and are deadlocked, ten days thereafter each party shall give to the other a written statement of its position on the matter in dispute; if, after having given and received these written statements, either party still desires to engage in a strike or lockout, it shall give five days' written notice of its desire to strike or lockout and a written statement specifying in detail its position on the matter in dispute. The party receiving such notice to strike or lockout and the accompanying specifications shall thereupon furnish to the other party a written statement of its position on the matter in controversy at the time notice to strike or lockout was received.

If this agreement is violated by the occurrence of a strike, work stoppage or interruption or impeding of work in the plant or any department, no

General Counsel's Exhibit No. 2—(Continued)
grievance shall be discussed or processed while such violation continues and the Union will endeavor to secure a return of the strikers to work in order that the dispute may then be settled peaceably in accordance with the procedures established in this agreement.

The company reserves the right to discipline employees taking part in any violation of this Article of this Agreement.

At no time shall Union employees be required to act as strikebreakers, but Union employees whose work is required for plant protection during any shutdown shall stay on the job and those who replace them shall not be considered strikebreakers.

* * * * *

Article XIII.

Termination

This agreement terminates on 1 April, 1954, but shall automatically extend from year to year unless either party hereto shall have given written notice to the other party at least seventy-five (75) days preceding April 1 of any year of its intention to modify, revise, adjust, or terminate this agreement, specifying in such notice the provisions that it desires to modify, revise, or adjust, or its desire for termination.

Upon the receipt of such notice the other party shall thereupon, and not less than sixty (60) days prior to April 1 of that year, offer any proposals it may have for modification, revision, adjustment, or termination of this agreement.

GIUSTINA BROS. LUMBER CO.

By N. B. GIUSTINA,

Its President

LOCAL UNION NO. 2611

Lumber and Sawmill Workers

By ILEY CASTEEL

CHIFFORD THIEL.

APPENDIX "B"

[Letterhead of Willamette Valley District Council
Lumber and Sawmill Workers.]

(Copy)

February 10, 1954

Giustina Bros. Lumber Company
2nd & Garfield
Eugene, Oregon.

Gentlemen:

Please be advised that the Willamette Valley District Council wishes to notify you that we wish to open negotiations for an increase of wages for all of your employees who are represented by our union.

We will appreciate the opportunity to discuss this matter with you or your representatives at an early date.

Awaiting your reply, we are

Very truly yours,

ELDON KRAAL,
Executive Secretary.

EK:vb

O.E.I.U. #11

A. F. of L.

APPENDIX "C"

Giustina Bros. Lumber Co., P. O. Box 989
Eugene, Oregon

February 20, 1954

(Copy)

Willamette Valley District Council, LSW-AFL
507 Willamette Street

Eugene, Oregon

Attention: Mr. Eldon Kraal, Executive Secretary

Gentlemen:

We have your letter of February 10, advising that your council wishes to open negotiations for an increase in wages for certain of our employees.

The Willamette Valley District Council is not the bargaining agent for our employees with authority to open negotiations on any subject.

Yours very truly,

GIUSTINA BROS. LUMBER CO.

Sam E. Hughes.

SEH/gg

cc: Local Union No. 2574

Local Union No. 2611

Willamette Valley Lumber Operators Assn.

APPENDIX "D"

480 Horn Lane
Eugene, Oregon
March 10, 1954

(Copy)

Giustina Bros. Lumber Co.
P. O. Box 989
Eugene, Oregon.

Gentlemen:

In reply to your letter of February 20, 1954, please be advised that the Willamette Valley District Council has been since February 5, 1948, and still is authorized by Local Union No. 2611 to open and negotiate wages in our behalf.

We wish to advise you further that the Willamette Valley District Council will hold that authority in the future unless we advise otherwise.

We hope that we have made this matter clear, and that in the near future you will enter into negotiations with the Willamette Valley District Council on the subject that is referred to in the letter dated February 10, 1954, addressed to you by the Willamette Valley District Council.

Very truly yours,

/s/ LELAND JAMES HOWDEN,

Leland James Howden, B.A.

Local Union No. 2611

[Local Union Seal]

P. S.: Former Local Union No. 2574 took the same action on February 19, 1948.

APPENDIX "E"

[Letterhead of Willamette Valley District Council
Lumber and Sawmill Workers.]

April 9, 1954

(Copy)

Giustina Bros. Lumber Company

Box 989

Eugene, Oregon.

Gentlemen:

Your attention is called to the our letter dated February 10, 1954 in which the Willamette Valley District Council requested a meeting with you or your representatives so that the matter of a wage increase for all of your employees who are represented by our Union could be discussed.

As of this date there has been no meeting with you on this matter. Furthermore, your attitude in this matter leads us to the conclusion that you are refusing to bargain in good faith with authorized agents of this Union.

Again we remind you that unless we are given the opportunity to meet and discuss this matter at an early date, we will have no alternative except to advise our membership to take such action as we deem necessary.

Please give this matter your serious attention.

May we expect an early reply?

Very truly yours,

ELDON KRAAL,

Executive Secretary.

cc: Local No. 2611

APPENDIX "F"

Giustina Bros. Lumber Co.
P. O. Box 989, Eugene, Oregon

April 13, 1954

Willamette Valley District Council
Lumber & Sawmill Workers, AFL
507 Willamette Street
Eugene, Oregon

Attention: Mr. Eldon Kraal, Executive Secretary

Gentlemen:

We have your letter of April 9, 1954.

We fail to find in your letter of February 10, 1954, a request, as alleged, for a meeting to discuss a wage increase for our employees.

You are hereby notified that we are authorizing a committee of Willamette Valley Lumber Operators Association to represent us, until further notice, in the discussions contemplated by your letter. You are further notified that the Association's committee is not authorized to reach any agreement binding upon us and that conclusions reached jointly by it and the authorized representatives of our local union are to be submitted to us for consideration.

Yours very truly,

GIUSTINA BROS. LUMBER CO.,
/s/ SAM E. HUGHES,
Sam E. Hughes.

SEH/gg

cc: Willamette Valley Lumber Operators Assn.

Local Union No. 2574

Local Union No. 2611

APPENDIX "H"

Registered No. 243,858.

Return Receipt Requested.

407 U. S. Courthouse
Seattle 4, Washington

December 6, 1954
(Copy)

Mr. Glenn L. Winery and Associates
115 Maxwell Road
Eugene, Oregon

Re: Giustina Bros. Lumber Co.—36-RD-75

Gentlemen:

The above-captioned case petitioning for an investigation and decertification of representatives under Section 9 of the National Labor Relations Act has been carefully investigated and considered.

It does not appear that further proceedings are warranted inasmuch as the collective bargaining agreement currently in effect between the company and Local 2611 of the Lumber and Sawmill Workers, AFL, constitutes a bar to investigation of representatives at this time. I am therefore dismissing the petition in this matter.

Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this action by filing a request for such a review with the National Labor Relations Board, Washington 25, D. C., and serving a copy upon the other parties, as well as with me. This request must contain a complete statement setting forth the facts and reasons upon which it is based. The request should be filed within ten (10) days from the date of receipt of this letter, except that the Board may, upon good cause shown, grant special permission for a longer period within which to file.

Very truly yours,

THOMAS P. GRAHAM, JR.,
Regional Director.

- cc: 1. General Counsel; National Labor Relations Board; Washington 25, D. C.
2. Giustina Bros. Lumber Co.; (2nd & Garfield Sts.) P. O. Box 989; Eugene, Ore.
3. Lumber and Sawmill Workers Loc. 2611; 507 Willamette St.; Eugene, Ore.
4. Mr. R. R. Morris, Atty.; Failing Bldg.; Portland 4, Oregon.
5. Mr. Donald S. Richardson, Atty.; Green, Richardson, Green & Griswold; Corbett Bldg.; Portland 4, Oregon.
6. Willamette Valley District Council; Lumber & Sawmill Wkrs., AFL, 507 Willamette St.; Eugene, Oregon.

EXHIBIT I

March 8, 1955.

Lewis Hoffman, Esquire
877 Willamette Street
Eugene, Oregon

Re: Giustina Bros. Lumber Company
Case No. 36-RD-75

Dear Mr. Hoffman:

The Board has carefully considered your Request for Review of the Regional Director's dismissal of the petition in the above case and decided to sustain the dismissal on the ground that the Board, in conformity with its well-established practice, will not entertain a petition for representation while there is pending in Case No. 36-CA-663 a complaint alleging violations of Sections 8 (a) (1) and (5) of the Act.

Very truly yours,

GEORGE A. LEET,
Assistant Executive
Secretary.

cc: Thomas P. Graham, Dir., NLRB, Seattle,
Washington

Robert Wiener, Officer-in-Charge, NLRB,
Portland, Oregon

Mr. Glenn L. Winery and Associates, 115 Maxwell Road, Eugene, Ore.

Giustina Bros. Lumber Co., P. O. Box 989,
Eugene, Ore.

Lumber and Sawmill Workers Local 2611, 507
Willamette Street, Eugene, Ore.

Mr. R. R. Morris, Attorney, Failing Building,
Portland 4, Ore.

Mr. Donald S. Richardson, Attorney, Green,
Richardson, Green & Griswold, Corbett Bldg.,
Portland 4, Ore.

Willamette Valley District Council, Lumber &
Sawmill Workers, AFL, 207 Willamette St.,
Eugene, Oregon

APPENDIX "J"

Fact Finding Procedures:

In agreeing to fact finding procedures, all parties will, consistent with their authority in negotiations either themselves act, or recommend to their principals the actions of:

1. Returning all crews to work as soon as practical.
2. Refraining from discrimination against any employee, employer or Union member for conduct since the inception of the strike.
3. Withdrawing any pending legal actions arising solely out of the strike, or the negotiations that preceded the strike.

The Fact Finding Board or Panel

1. Shall not constitute a 'Board of Arbitration.'
2. Shall investigate the industry issues existing between labor and management in the present lumber strike and report its findings to both parties.
3. In making their investigation the panel shall take into account the standard of living and wages in other lumber producing areas, both domestic and foreign, as compared to wages and standard of living maintained in the Douglas Fir and Western Pine areas of the Pacific Northwest.
4. For the purposes of this study the industry shall be considered as the logging, lumber and plywood industry of the States of Oregon and Washington. The panel shall ignore market price distortions caused by unnatural shortages of materials.
5. Shall release to the public and the press and

radio a statement of the finding of the facts in the event that any of the parties fail to accept and act in accordance with any findings or recommendations of the board or panel.

6. The fact finding committee shall report within 90 days unless given further time by the union and the employers.

7. Should a wage increase result from these proceedings, such increase shall be paid retroactive to date employees return to work.

8. The panel shall consist of seven persons: one each from Oregon and Washington selected by the Union; one each from Oregon and Washington selected by the employers; two representing the public—selected by each of the Governors of Oregon and Washington—and a third to be appointed and designated jointly by the Governors of the States of Oregon and Washington as the chairman of the committee. The chairman shall have no vote in decisions except in case of a tie.

The Representatives of the Lumber Operators and the Lumber and Sawmill Workers, American Federation of Labor, recommend that the above stipulation be endorsed by the individual employer and the Union.

Signed—For the Employers:

/s/ MARTIN N. DEGGELLER,

For the Union:

/s/ KENNETH DAVIS,

Exec. Secretary, Northwestern
Council.

August 26, 1954.

APPENDIX "K"

(Copy)

Giustina Bros. Lumber Co.,
Eugene, Oregon

September 2, 1954

Local Union #2611, LSW-AFL
480 Horn Lane
Eugene, Oregon

Gentlemen:

You are notified that the Collective Bargaining Agreement between Local Union No. 2611, Lumber and Sawmill Workers and this company is terminated.

Very truly yours,

Giustina Bros. Lumber Co.

N. B. Giustina.

NBG/gg

APPENDIX "L"

1-19-55

Giustina Bros. Lumber Company,
P.O. Box 989,
Eugene, Oregon.

Gentlemen:

This is to notify you that Lumber and Sawmill Workers Local Union 2611 has taken action to terminate the strike of employees at your plant, and that the strike and picketing in connection therewith have been terminated.

The union hereby unconditionally requests the immediate reinstatement of the employees who have been on strike.

Very truly yours,

Lumber and Sawmill Workers Local
Union No. 2611,

/s/ By LELAND JAMES HOWDEN.

APPENDIX "O"

(Copy)

Giustina Bros. Lumber Co.

P. O. Box 989, Eugene, Oregon

January 22, 1955

Local #2611, LSW-AFL

480 Horn Lane

Eugene, Oregon

Attention: Mr. Leland James Howden

Gentlemen:

Receipt is acknowledged of your letter of January 19, 1955 asking reinstatement of men who went on strike.

You are advised that there are no vacancies in this plant.

Sincerely yours,

GIUSTINA BROS. LUMBER CO.

/s/ SAM E. HUGHES,

Sam E. Hughes.

SEH/gg

cc: Richard Morris

Attorney-at-Law

GENERAL COUNSEL'S EXHIBIT No. 3

United States of America
National Labor Relations Board

PETITION

Case No. 36-RD-7. Dated Filed: 8/25/54.

Compliance Status Checked by MD.

* * * * *

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority:

1. Purpose of this Petition

* * * * *

C. RD—Decertification.—A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative as defined in section 9 (a) of the act.

* * * * *

2. Name of Employer: Giustina Bros. Lumber Co.

Employer Representative to Contact: Sam Hughes.

Phone No. 5-2301.

3. Address(es) of Establishment(s) Involved:
2nd & Garfield Streets, Eugene, Oregon.

4a. Type of Establishment: Factory.

4b. Identify Principal Product or Service: lumber manufacturing.

5. Description of Unit Involved:

6a. Number of Employees in Unit: 118.

6b. Is This Petition Supported by 30% or More of the Employees in the Unit? Yes.

Included all production and shipping employees of Giustina Bros. Lumber Co. sawmill operation at Eugene, Oregon.

Excluded guards, clerical and supervisory employees.

* * * * *

8. Recognized or Certified Bargaining Agent:

Local 2611, Lumber & Sawmill Workers.

Address: 5th & Willamette Streets, Eugene, Oregon.

Affiliation: A.F.L.

Date of Recognition or Certification: 1948—and ever since.

9. Date of Expiration of Current Contract, if any: April 1, 1955.

* * * * *

11. Parties or Organizations Other Than Petitioner Which Have Claimed Recognition as Representatives, and Other Unions Interested in the Employees Described in Item 5 Above:

Name: Local 2611 Lumber & Sawmill Workers.

Affiliation: A.F.L.

Address: 5th & Willamette Sts.

* * * * *

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

Glenn L. Winey and Associates, employees of
Giustina Bros. Lumber Co.

/s/ By GLENN L. WINEY,

Lift Truck Operator.

Address 115 Maxwell Road, Eugene, Oregon.

Telephone number: 4-1245

GENERAL COUNSEL'S EXHIBIT No. 4

Lumber & Sawmill Workers Local Union No. 2611

480 Horn Lane

Eugene, Oregon

September 13, 1954

Giustina Brothers Lumber Company

Box 989

Eugene, Oregon.

Gentlemen:

With reference to your letter of September 2, 1954, we wish to call your attention to the fact that the collective bargaining agreement between your company and this Union can be terminated only in accordance with the provisions of Article XIII. The agreement, therefore, remains in effect.

Yours very truly,

Lumber and Sawmill Workers No.
2611

/s/ By LELAND JAMES HOWDEN,

Leland James Howden, Financial Secretary and
Business Agent, Local No. 2611.

GENERAL COUNSEL'S EXHIBIT No. 5

Lumber and Sawmill Workers Union

Local No. 2611

Eugene, Oregon

Archie Ashbridge

1030 Water St.

Springfield

C. E. Curts

Rec. Sec.

975 West 7th

February 5, 1948

Willamette Valley District Council

507 Willamette St.

Eugene, Oregon.

Dear Sirs and Brothers:

This is to notify you Local #2611 does hereby instruct the Council to continue negotiating for further increases in wages.

Fraternally yours,

/s/ CHAS. E. CURTS,

Rec. Sec.

(Local Union Seal)

RESPONDENT'S EXHIBIT No. 3

Transcript of Proceedings of Conference Between
Giustina Bros. Lumber Co. and A.F.L. Lumber
and Sawmill Workers Local Union No. 2611.

January 8, 1955

Appearances: Giustina Bros. Lumber Co. Sam
Hughes, Nat Giustina, Ehrman Giustina*.

*Mr. Ehrman Giustina was present at the conference but did not take part in the discussions. All references to "Mr. Giustina" in this transcript are to Mr. Nat Giustina.

Local Union No. 2611, A.F.L.—James Howden, Eldon Kraal.

Mr. Hughes: Before we get started here, in the past there have been alleged statements made by different persons representing the company and it is our feeling that there has been some inaccuracy as to those statements. So, we have asked to have a reporter present this morning to keep the record clear.

Now, I presume there is no objection on the part of the Union to that, Mr. Howden.

Mr. Howden: It is a little unusual. I have known it to be done, and usually, it played back to one or the other party's disadvantage. It is unusual, but I am not going to object.

Mr. Hughes: You have no objection then, on behalf of Local 2611?

Mr. Kraal: Before we get started here, I don't even know what we are going to talk about, and it might be that—ordinarily it would be, probably, in my opinion, it would be that, if people are ready to talk business, unless it is classified or secret or something, well, and if they aren't ashamed of what they have to say, then I don't think that—I know that I won't be ashamed of anything I have to say. But what are we here to talk about? From the letter that the local union had, it was impossible for me to know for sure. So, we are here this morning to see what the company has to talk about, what the company has in mind, what sort of business, what are we here for?

Mr. Hughes: Certainly, we intend to make that clear very shortly, Mr. Kraal. You, then have no objection, I presume?

Mr. Kraal: I have no objection.

Mr. Hughes: All right. This meeting is called, by the company. I presume that you are appearing in your capacity as Business Agent for Local 2611, is that correct?

Mr. Howden: Uh-huh.

Mr. Hughes: I presume that Mr. Kraal is in attendance on behalf of the Willamette Valley District Council. Is that correct?

Mr. Kraal: That is right.

Mr. Hughes: Fine. Now, this meeting, as I say, is at the request of the company. There have been developments that have taken place so far as the company is concerned, and we wish to direct your attention to those, and we wish to discuss with you the application of those developments, at least to some extent as they apply to this company.

These gentlemen over here are not invited, were not invited by the company. They have knowledge of this meeting as do many men in the plant. There has been a notice posted on the Board, and these men have appeared, I presume, as observers for the employees of Giustina Bros. Lumber Co. I assume there is no objection whatsoever, on your part, to that.

Mr. Howden: That is right.

Mr. Hughes: The meeting, as I say, is held at the request of the company. And we wish to make clear,

the holding of this meeting is not a waiver on the part of the company of any question of representation that has been raised by any employee in this company, or group of employees by means of a decertification petition, or any other matter brought before the NLRB. The company wishes you to be informed that the new developments we make reference to, are first of all the 7½ cent an hour pay increase which is being effectuated in a portion at least of the industry, and has been placed in effect in most other employer's operations that we have knowledge of. Secondly, as you may, or may not, know a recent decision of the National Labor Relations Board has reversed a prior holding and well-established rule of the Board to the effect that if there was a representation matter raised, a question raised concerning the status of an incumbent union, it was an unfair labor act for the company, the employer, to negotiate with the incumbent union. That is the other new development that I wish to make clear, and have the record show, and reference is made to that new development as the purpose of this meeting.

Mr. Kraal: I will interrupt you, if I may.

Mr. Hughes: Yes.

Mr. Kraal: You are speaking of something here, just at the last statement, that I am not aware of.

Mr. Hughes: It is an administrative decision of the National Labor Relations Board, General Council, and I am sure that Counsel for the Union is aware of the decision, and that they will advise you

on it. If you wish, I can give you the citation, Mr. Kraal.

Mr. Giustina: Is that in the advance sheets, Sam?

Mr. Hughes: Yes, it is a quite recent decision.

Mr. Kraal: Well, we are not prepared, at the moment, to have the advice of our Counsel.

Mr. Hughes: Well, I want to show that as far as the company is concerned, the purpose for calling this meeting, is the new developments which were noted in the letter to you, and you raised the issue earlier that you did not know, Mr. Kraal, the purpose of this meeting, and I wanted to lay that out, so you would be informed.

Mr. Kraal: There is no criticism on that, but I just wanted——

Mr. Hughes: Oh, surely, I appreciate that.

Mr. Kraal: I haven't been made aware of the fact, if it is a fact, that you just put out, laid out.

Mr. Hughes: If you would care to, I will give you the citation prior to your leaving the building and you can more readily refer to it, if you so desire.

This company is willing to place in effect as of January 1, 1955, a 7½ cent an hour wage increase to all employees in the plant, excepting Clerical Employees, guards, supervisors and others not under the—not in the bargaining unit under the act.

Is there any objection on the Union's part to the institution of such a wage increase? What is the feeling of Local 2611, Mr. Howden?

Mr. Howden: Since the 7½ cents has come up, we have not had a meeting and will not have one until Tuesday evening.

Mr. Giustina: Who had not had a meeting?

Mr. Howden: 2611. Local 2611 has not had a meeting. I think before it is put into effect it should be agreed upon and signed.

Mr. Hughes: It is the Union's desire than that the 7½ cents wage increase, effective January 1st, 1955, be committed to writing and signed prior to its effectuation in the plant. Is that correct?

Mr. Howden: Well, I would say, yes. The words there that I think is correct.

Mr. Hughes: Well, do you have any objection?—

Mr. Kraal: Well, as far as that is concerned, if I may interject myself into this, the question of wage under the negotiations and agreements that have been made in the past year, regarding the wages, have been authorized and are being—it has been directed by the local unions, that the District Council do the negotiating; and there is quite a bit of discussion, or several subjects as far as the Council—the District Council of this company is concerned that we would have to get out of the way before we could get down to talking about a wage contract and settlement.

This company is not a party to necessary agreements that should have been made and were made with other companies prior to the fact-finding panel of the Governors coming out with their present recommendation. Therefore, I think we are en-

tirely ahead of ourselves here, as far as the Union is concerned.

Mr. Hughes: Well, Mr. Kraal—

Mr. Kraal: There are several things that will have to be cleared up.

Mr. Hughes: As far as the Governor's fact-finding panel and your references to it, this company is not a party to that panel.

Mr. Kraal: That is what I am trying to say they haven't been made a party—

Mr. Hughes: I beg your pardon.

Mr. Kraal: Well, this the first time that I ever was informed that you ever had any intention to pay any attention whatever to any recommendation.

Mr. Hughes: We are prepared to place the 7½ cents an hour wage increase in effect because it appears to us that the industry pattern has been established, and in order to maintain our competitive position with other employers—and we are not unmindful that there are A.F.L. locals who have signed agreements effecting the 7½ cents an hour wage increase. There are a considerable—we are informed there are a considerable number of C.I.O. local unions and employers who have placed in effect the 7½ cents an hour wage increase. We are not placing it in effect because of being signatory to any agreement by a Governor's panel, or anything else. In that connection, it would be well to inform you possibly, Mr. Kraal, as well as Mr. Howden, that the affairs of this company are managed by a general manager appointed by a Board of

Directors. His primary responsibility is to the Board of Directors of this organization, and until such time as they see fit to elect an arbiter or a panel of so-called experts, then we feel that we will continue our present status as far as negotiating any wage increases are concerned. In short, we are not ready to turn over the management of this company to outsiders. We do not feel that the best interest of our employees, or this company, would be served by such a course of action. I state that to make clear our position on the Governor's so-called fact-finding panel.

Mr. Kraal: Well, I will make my position clear. I am not here to tell you you can, or you can't place it in effect. That is the company's business. You can do what you please about it, but it is neither here nor there with the District Council until certain other questions have been taken care of satisfactorily. We are not here to discuss 71½ cents wage increase or anything else until other things are cleared up. We are not here to tell you that you can't do it.

Mr. Hughes: Mr. Kraal, I——

Mr. Kraal: Evidently, so far, it is beginning to sound to me like, that so far as I am concerned, I don't have any business in here.

Mr. Hughes: Mr. Kraal, you were speaking as "we", and I know you represent the Willamette Valley District Council——

Mr. Kraal: When I say, "we", I mean the Willamette Valley District Council of Lumber and Sawmill Workers.

Mr. Hughes: We have no collective bargaining agreement with the Willamette Valley District Council, our collective bargaining agreement was with Local 2611. I have addressed my questions to the representative of 2611. You have the right to be called in here by 2611, if they so desire.

Mr. Kraal: That is right. But I have been called here by 2611, and I am speaking now in their behalf.

Mr. Hughes: I see. You are speaking now as a representative of 2611?

Mr. Kraal: Yes, sir.

Mr. Hughes: Then you have no objection to the institution of the 7½ cents an hour wage increase.

Mr. Kraal: I didn't say that.

Mr. Hughes: You think there are other matters that should be discussed first.

Mr. Kraal: I am not going to make any argument that will prevent you from doing whatever you see fit to do.

Mr. Hughes: You would not have any objection to it then, Mr. Kraal?

Mr. Kraal: That is not what I said.

Mr. Hughes: You do have an objection to it then, Mr. Kraal?

Mr. Kraal: I didn't say that either.

Mr. Hughes: What did you say then, Mr. Kraal?

Mr. Kraal: I said you just go ahead and run your own business as far as your wage structure is concerned here until you take care of such other matters between the union and the company, then

we will be prepared to talk, as to wages. At the present time, we are not prepared to talk.

Mr. Hughes: At the present time you are not prepared to talk anything with us until other issues which you refer to are taken care of, is that correct?

Mr. Kraal: That is right.

Mr. Hughes: Then your position is probably that we go along with this Governor's Fact-finding Panel?

Mr. Kraal: No, sir. I am not taking a position on anything regarding the Governor's Fact-finding Panel until other disputes are agreeably settled between the Union and this Company.

Mr. Hughes: I see.

Mr. Kraal: When we get that done, if ever. Then we will be ready to talk about the Governor's Fact-finding Panel and their recommendations for 7½ cents or any other amount that it is necessary to talk about. At the present time, we are not in a position to talk about them.

Mr. Hughes: At the present time——

Mr. Kraal: And in my opinion, neither are you.

Mr. Hughes: At the present time, Local 2611 is not in a position to discuss the 7½ cent an hour wage increase.

Mr. Kraal: That is correct.

Mr. Hughes: You don't desire to negotiate on the 7½ cent an hour wage increase?

Mr. Kraal: So long as the Company operates and performs as they are, and have been, that is

correct. We don't have any business talking to you about it.

Mr. Hughes: Are you referring to the pickets?

Mr. Kraal: That is right.

Mr. Hughes: Mr. Kraal, the strike was called by Local 2611. Not by this Company. The pickets have been placed and kept there apparently on behalf of Local 2611. So, I think that is a matter that is properly within the—within your sphere. In other words, we did not call the strike, Mr. Kraal. The strike was called by Local 2611, or the Willamette Valley District Council.

Mr. Kraal: Certainly it was. And it still is being operated under that local union.

Mr. Hughes: Well, that is what I say. As far as the company is concerned, we didn't call the strike. We haven't placed the pickets there.

Mr. Kraal: Nobody said you did.

Mr. Hughes: Then it is your desire——

Mr. Kraal: Some of the matters that caused the strike to be called, the Company did though.

Mr. Hughes: We refused to grant a wage increase as requested by the Willamette Valley District Council.

Mr. Krall: Right.

Mr. Hughes: That is probably correct.

Mr. Kraal: Refused to negotiate, and refused a lot of things. Committed unfair labor practice in our opinion. And those are unsettled questions.

Mr. Hughes: I am glad you stated that those were in your opinion, as there seems to be a diversion of opinion on that matter.

Mr. Kraal: It seems that probably some of the responsible people who have the decision to make, also, more or less agree with us. It seems up to the present time——

Mr. Hughes: I am glad to see that you said it seems, and more or less, because that leaves a very wide margin.

Mr. Kraal: It seems that they are more in favor of believing that the Union is correct, than they do that you are, the Company, so far.

Mr. Hughes: Well, the point that we wished to discuss with you as stated to you is the institution of the 7½ cent an hour wage increase. Now you have stated, Mr. Kraal, on behalf of Local 2611, that you are not opposing it, and you are not——

Mr. Kraal: I could state it but I haven't. So don't try to put words in my mouth.

Mr. Hughes: Well, may I ask you this question, Mr. Kraal? You are refusing to discuss the 7½ cent an hour wage increase?

Mr. Kraal: Right. That is right.

Mr. Hughes: You refused to discuss or negotiate on that subject?

Mr. Kraal: That is right, at the present time.

Mr. Hughes: At the present time. All right. The next thing, Mr. Kraal, if you refuse to discuss that. Is there any foreseeable time in the future when you feel that you will be in a position to discuss it?

Mr. Kraal: Whenever the way is cleared and other disputed matters are cleared up. I will be happy to discuss it.

Mr. Hughes: But as of this time you are not prepared to negotiate on the 7½ cent an hour wage increase?

Mr. Kraal: Correct.

Mr. Hughes: I will ask you again. Does the union object—does Local 2611 object Mr. Howden, to the institution of the 7½ cent an hour increase as of January 1st, 1955?

Mr. Howden: At the present time, until it is agreed to, and when it is agreed to, there will probably several other questions arise. And at that time, if all the questions concerning the 7½ cents are agreed upon, then the local will probably instruct the officers or the committee to sign such an agreement.

Mr. Hughes: You raised a number of interesting points there. Probably we should have discussed these earlier in our conversation. I note you have no committee in attendance at this meeting.

Mr. Howden: Uh-huh.

Mr. Hughes: Can you tell me why you don't Mr. Howden?

Mr. Howden: In their opinion there is more to be done to settle the dispute by a few men, than by a lot of men doing the talking.

Mr. Hughes: I see.

Mr. Kraal: The local committee doesn't have the authority to discuss 7½ cents, and just for the reason that we happened to suspect that perhaps that might be what the company wished to discuss, that is why the committee, the local committee, is not

here. When it comes down to the final decision, the local committee will have their right and the opportunity to help decide it.

Mr. Hughes: I see. In other words the——

Mr. Kraal: The District Council is—still has the authority on the wage question, and probably will have it for a long time.

Mr. Hughes: I see. That seems to be somewhat a contrary attitude that was expressed by a representative of the District Council at the time of the back to work, the Governor's——

Mr. Kraal: I don't agree with you.

Mr. Giustina: Weren't the agreements and the Governor's Fact-Finding Panel made between the locals and the companies.

Mr. Kraal: No, it was not. It was made between the Northwestern Council and——

Mr. Giustina: And the companies?

Mr. Kraal: And the local unions, and the various employers. And the final analysis signed their names to an agreement to abide by the decision of that Panel. But this company has not, to my knowledge, signed such a document.

Mr. Giustina: Well, I know, this company has no part of that.

Mr. Kraal: Well, o.k., then what are we—we are trying to be Amos and Andy around here, it looks to me like.

Mr. Giustina: Well, then the point boils down that the authority is still with the District Council.

Mr. Hughes: The agreement which was—the ten-

tative agreement which was presented to this company by Mr. Howden on the 28th of August has a space on it for the signature of the local union and the company. There was nothing for the Willamette Valley District Council to sign. Now, it is your position that the Willamette Valley District Council.—

Mr. Kraal: Well, the Willamette Valley District Council issued that paper, recommended it.

Mr. Hughes: Now, it is your position that no agreement could be reached between the local and the company, without the authority of the District Council, is that correct?

Mr. Kraal: Not under the laws and rules of the Union, no.

Mr. Hughes: I am not familiar with those laws and rules, Mr. Kraal. I am just asking you, is it impossible for the local union to reach an agreement with the company on the—

Mr. Kraal: It is not impossible for the local union to do that.

Mr. Hughes: If I understand you correctly—

Mr. Kraal: It is probably improbable, that they will do it.

Mr. Hughes: I see. Not impossible, but improbable.

Mr. Kraal: It is not impossible.

Mr. Hughes: I see. Thank you. Mr. Howden, to pursue this committee thing a little further, and I think that we have probably clarified a great deal of the questions surrounding that. The non-appear-

ance of the plant committee at this time could not be due to the fact that there are no persons eligible for membership on that committee?

Mr. Howden: There are members eligible for that committee.

Mr. Hughes: I thought possibly, your not having a committee here was an acknowledgment that there was no collective bargaining agreement in effect.

Mr. Kraal: Well, that sounds just like wishful thinking on your part, to me.

Mr. Hughes: We just wanted to have that point clarified, Mr. Kraal. There is a committee?

Mr. Kraal: There is a committee.

Mr. Hughes: I see. Then it is your position that the collective bargaining agreement is still in effect.

Mr. Kraal: It is still in effect.

Mr. Hughes: I see. And the non-appearance of that committee at this meeting has nothing to do with the non-existence of that collective bargaining agreement.

Mr. Kraal: I will answer that for you.

Mr. Hughes: I asked Mr. Howden the questions, Mr. Kraal.

Mr. Howden: Well, I will ask Mr. Kraal to answer it for you. Mr. Kraal is free to answer any questions.

Mr. Kraal: For your information there is a committee, an official committee of local 2611 at the present time, and they are available to discuss proper business. As soon as it is ascertained and

we are sure that it is proper business, they will be available for that. As long as it is improper, they probably will not.

Mr. Hughes: I want to be sure that we understand each other as far as the $7\frac{1}{2}$ cent an hour wage increase is concerned. The local union 2611 does not object to the institution of such a wage increase, and on the other hand they do not agree to it, is that correct, Mr. Howden?

Mr. Howden: There has been no meeting to vote on it to agree to it, on this operation, or on any other operation. They have not accepted the $7\frac{1}{2}$ cents. It has been recommended that they accept it.

Mr. Hughes: It has been recommended that they accept it?

Mr. Howden: Uh-huh. But there has been no vote taken on it.

Mr. Hughes: What has been your feeling as the Business Agent to the $7\frac{1}{2}$ cent an hour wage increase? What is your official position on it, as Business Agent, the agent for local 2611?

Mr. Howden: My official position on it will be—but you have got an awful lot tied in there in one question—that I will probably recommend acceptance of it, if certain other matters are understood.

Mr. Hughes: That is with this company?

Mr. Howden: With this company and all companies.

Mr. Hughes: Would you care to make reference to “certain other matters” at this time?

Mr. Howden: Probably I should let you talk, you have got more to say on that down through the line of your own point. Do you admit that the contracts are still in force?

Mr. Hughes: We make no such admission. In fact our position on the non-existence of the contract, is quite clear. It is our opinion that there is no collective bargaining agreement in effect. That has been terminated.

Mr. Howden: We disagree with you there. So, I state that if that agreement is not in force, which we—I claim it is, and the local still feels it is, that it would do you no good to try to make an agreement with the company on wages, as long as there is not a contract.

Mr. Hughes: You are still the collective bargaining agent, Mr. Howden, according to your admissions and statements.

Mr. Howden: But then—we are still the bargaining agent, and we still have a contract.

Mr. Hughes: You can be a collective bargaining agent, Mr. Howden, without a contract.

Mr. Howden: But we will state that the contract is still in force, and we will have to stand with that opinion, that it is still in force, before any wage settlement.

Mr. Hughes: Then, you do not care to—you will not agree with the company, that a 7½ cent an hour wage increase effective January the 1st, 1955, be placed in effect. Even though you claim there is a contract, you are not willing to agree to the placing in effect of that 7½ cent an hour increase.

Mr. Howden: Not at the present time, no.

Mr. Hughes: Not at the present time, I see. And as far as the future, you are not prepared at this time to make any statements concerning that until certain conditions have been met.

Mr. Howden: I wouldn't say that.

Mr. Hughes: Well, would you tell me what you would say?

Mr. Howden: Sometime in the future, I have not the authority to say, and I do not intend to say things that I do not have the authority to say.

Mr. Hughes: You are, you claim, the bargaining authority, and yet you refuse to negotiate the 7½ cent an hour wage increase. Now, isn't that somewhat inconsistent?

Mr. Howden: We will bargain on that along with all the rest of it.

Mr. Hughes: But you won't bargain on it by itself

Mr. Howden: We won't bargain on it by itself. We won't bargain on it, and on the contract.

Mr. Hughes: And on the contract.

Mr. Howden: Certainly.

Mr. Hughes: And is it your desire to bargain on a new contract at this time?

Mr. Howden: Definitely not.

Mr. Hughes: You don't desire to bargain on a new contract?

Mr. Howden: No.

Mr. Hughes: What is there to bargain on?

Mr. Howden: We state that the old contract is in force.

Mr. Hughes: And——

Mr. Howden: And that is would have to be lived up to. As I told you the last time, and the only time it was raised, sometime here in the latter part of June, or the first of July, I don't remember. I think it was about the 29th of June. And Nat asked me at that time if the contract was in force. And I said, "yes." And I will still stay by it.

Mr. Giustina: Well, Jim, you state that you have the bargaining authority. You state that the contract is still in force. And still you refuse to negotiate on 7½ cents. What else is there to talk about.

Mr. Howden: Well, we will bargain on 7½ cents, but then there is——

Mr. Giustina: Well what else have we got to talk about?

Mr. Howden: Well there is—now then, you go along, a——

Mr. Giustina: Are we violating the contract that you claim is in effect?

Mr. Howden: I won't say at this time, that you are.

Mr. Giustina: If, as is your contention, the contract is in effect, and you have our bargaining authority, and we are not violating the contract, and there is nothing to negotiate in the contract, why do you refuse to negotiate on the 7½ cents?

Mr. Howden: Well, we haven't refused to negotiate on it?

Mr. Giustina: You have.

Mr. Hughes: Mr. Kraal stated that you refused to negotiate on it.

Mr. Kraal: Let me ask a question. I ought to ask a few questions, I think.

Mr. Hughes: Certainly.

Mr. Kraal: If you are so sure that the contract is not in effect, as you said numerous times, the company I mean, in writing and various communications, why don't you—why do you call the Union in here to find out whether you can place 71½ cents in effect, or not. Why don't you go ahead and act on your own good judgment and place it in effect and see what happens?

Mr. Hughes: May we answer that now?

Mr. Kraal: Why certainly. If you can answer it.

Mr. Hughes: I think it was answered very early and I think that we can restate it to you. The actions of the Board altering these conditions, as we stated. Your status as the collective bargaining agent has been challenged. There is a question of representation which has been raised by a considerable number of employees of Giustina Brothers Lumber Company——

Mr. Kraal: And by the company, itself, isn't that right?

Mr. Hughes: ——during the latter part of October or November, at least the latter part of 1954, the National Labor Relations Board has reversed its earlier policy of allowing a company, or employer to continue negotiating with an incumbent union. It is no longer an unfair labor act for an employer to negotiate with an incumbent union

when a question of representation has been raised, either by employees, or another union. Bearing those things in mind, we addressed a letter to you, because of the recent wage increases that have been effected in the industry, we addressed a letter to you and requested this meeting. I think, Mr. Kraal, that that answers your question, and will refresh your memory on those points.

Mr. Howden: Well, I think a transcript of that——

Mr. Kraal: Well, I don't think—maybe that is the best answer you can give me on it, but it still don't answer it.

Mr. Howden: Well, if I caught your wording there right, it does not stop you from negotiating with the incumbent union.

Mr. Hughes: So, we called you in—we requested this meeting. And it is our opinion that we would no longer be guilty of a possible unfair labor act by negotiating with you when your status has been challenged, as has been done in this case. That is why we desire to negotiate with you.

Mr. Howden: Now, say that that is—of course in your letter, you stated that it would not interfere with—which, we knew you would take the position, that it would not interfere with—in any way with the petition, the association petition.

Mr. Hughes: The exact wording of the letter is: “Neither this letter, nor any meeting, shall be construed to have any effect on the representation proceedings filed by Mr. Winey and associates.”

Mr. Howden: I didn't remember the exact word-

ing, but I knew what it meant. So, on—following that, and if the other things were put in, they would have no effect upon the Winey petition. If we made an agreement, or anything else upon the 71½ cents, upon the contract was in force or was not in force.

Mr. Hughes: Well, I have already stated that if it is the local's desire to negotiate a new contract, why naturally, we are willing to negotiate. We want you to be sure that you understand our desire to negotiate a new contract, if it is your desire to do so. The point that we would like to discuss now, and what the main purpose of this meeting was, was the institution of the 71½ cent an hour wage increase. I have already detected Mr. Kraal's objections to that. Whether he speaks for the membership or not, I have serious doubts, and whether the best purposes of the membership would be furthered by a steadfast adherence to that position, I also question. Mr. Kraal will have to answer to his membership for that. Possibly there are several questions in the minds of a considerable portion of the membership which Mr. Kraal represents, or claims to represent. I think I have seen certain signs of it in Eugene and Junction City, and towns down around Glide, Oregon, and so forth, Brownsville. Excuse me not Brownsville, Dawson. There seems to be a lot of people who——

Mr. Kraal: Well, there seems to be a lot of people that didn't follow the recommendations of the employer's union either, including this company. So, if we want to dig up a bunch of dirt here and sling it at each other, well we can just tie right

into that. I can put out a pretty good one there too.

Mr. Hughes: Mr. Kraal, just to make that point clear in your mind, as far as this organization is concerned, our negotiating, our primary responsibility is vested in a General Manager, as I have earlier pointed out to you, our Board of Directors isn't—

Mr. Kraal: Well, nobody is disputing, or even asking any questions about how this company operates, as far as their internal affairs of their company are concerned, and the Union is not interested. Therefore, as far as I am concerned you are just wasting your time to explain all of that, because it is not pertinent to this, and it is not the Union's business. We don't care. I don't personally care how—whether the company operates with a dictatorship, or a Board of Directors. That has nothing to do with the problem between the Union and the company.

Mr. Hughes: Well, since you have raised those points, Mr. Kraal, do you think there is any interest on the part of the persons in the collective bargaining unit here, whether the Union's affairs are governed by a Board of Directors or a dictator?

Mr. Kraal: Well, I don't even care to continue the argument with you on that point. I have tried to make that clear already.

Mr. Hughes: Well, your feeling on the 71½ cents an hour—can we get back on that, Mr. Kraal?

Mr. Kraal: You can get back on it, if you care to.

Mr. Hughes: What is your position on it? I am unable to discern it.

Mr. Kraal: I told you my position. I told you my position, and my official position, is at the present time, at the moment, that it is incorrect that we discuss it. Now, that doesn't mean that we are refusing to bargain on the 7½ cents or on any other wage matter that might be in front of us. But we have other matters that must be cleared satisfactorily to both parties to the dispute that we have been having and are still having. Until we come to that point of the disagreement, and at that time we will be prepared to discuss it.

Mr. Hughes: You are not prepared to negotiate on the 7½ cent an hour increase——

Mr. Kraal: Not until we take up some other unfair labor practices that are being conducted here and settle those satisfactorily.

Mr. Hughes: Well, is there anything else that you would care to discuss at this time.

Mr. Kraal: No. I had nothing on my mind to discuss at this time. I am here at your request.

Mr. Hughes: Yes.

Mr. Kraal: Not at mine. I would be happy to discuss anything that was between us, if it was possible to clear it up satisfactorily, so that it is fair to both parties, and a reasonable settlement could be reached. I am interested in that.

Mr. Hughes: You are interested in the 7½ cent an hour wage increase then.

Mr. Kraal: Pardon me. I am interested in all the matters that are in dispute between us.

Mr. Hughes: Well, on the 7½ cents an hour, Mr. Howden, I want to again say that the company is willing to place that in effect as of January the 1st, 1955. Apparently, the Union does not object, and they don't agree. They are off in this "Never never land" that we can't tell what they——

Mr. Giustina: Well, they are just refusing to negotiate on it.

Mr. Hughes: They have refused to negotiate on it.

Mr. Kraal: That is not true.

Mr. Hughes: At this time, if there is nothing else before the meeting——

Mr. Kraal: That is not true at all. I will dispute that. The union has not refused to negotiate.

Mr. Hughes: On the 7½ cent an hour wage increase——

Mr. Kraal: At the present moment, we have said that it is not the right time to negotiate on it, and other things must be cleared up first.

Mr. Hughes: Well, you are refusing to negotiate on the 7½ cents an hour, then.

Mr. Kraal: We are still sitting here, and we haven't refused.

Mr. Hughes: I am sorry, I thought I understood you——

Mr. Kraal: We just refused to take it up in the order that the company wishes it taken up in. We will take it up in a little different order.

Mr. Hughes: What order do you want to take it up in?

Mr. Kraal: And we will get the whole thing settled up.

Mr. Giustina: What order do you want to take it up in?

Mr. Kraal: The things that happened first, first. And we will get the stage set so that we can then discuss the 7½ cents.

Mr. Hughes: Well, we are prepared to listen to anything you have to say, Mr. Kraal and Mr. Howden, on behalf of Local 2611. Throw it out.

Mr. Howden: There are unfair labor practices, as you know, that are pending.

Mr. Hughes: May I correct that statement. Alleged unfair labor practices. We don't admit the existence of any unfair labor practices on the part of the company.

Mr. Howden: We alleged there were. Which has happened, certain things happened, and a complaint has been issued, and sometime probably before any decision is made one way or the other.

Mr. Hughes: And so, until such a decision is made, you are refusing to negotiate the 7½ cent wage increase.

Mr. Howden: I think there is some——

Mr. Kraal: He didn't say that, now. Far from it.

Mr. Hughes: Not very far from it.

Mr. Kraal: Pardon.

Mr. Hughes: Not very far from it.

Mr. Kraal: Well——

Mr. Giustina: Well, go ahead Jim——

Mr. Kraal: Quite a little ways from it.

Mr. Giustina: Go ahead Jim—we asked you what

we had to do to get to it. You are talking about the unfair—alleged unfair labor practices.

Mr. Howden: Well, there is a picket line here.

Mr. Giustina: We did not put the picket out there.

Mr. Howden: I know. Now you say—with that 7½ cents you would probably request the removal of that picket line.

Mr. Giustina: No.

Mr. Hughes: We never made such request.

Mr. Howden: Well, I don't think it is very pleasant for you to have it there. Maybe it is.

Mr. Giustina: It doesn't bother me a bit.

Mr. Howden: Then, there is men out there that are employees of this company.

Mr. Giustina: Where?

Mr. Hughes: You go ahead and finish your statement.

Mr. Howden: And they should be taken into consideration.

Mr. Giustina: You mean they are getting cold?

Mr. Howden: Oh, not very cold. They got gas lanterns there in most of those cars to keep warm by. And there is a question of the men there, employees of this company. That is one very important question.

Mr. Hughes: Are there some others?

Mr. Howden: There could be, but we might just as well start in on that one.

Mr. Hughes: Well, Jim, as far as the persons that are out there on the picket line, it is the company's position that they are not employees of this

company. They have been replaced. I think probably you would be doing your members out there a service if you advised them on that, if you have not already done so.

Mr. Howden: Why don't you advise them yourself, by a letter to that effect?

Mr. Hughes: Well, there doesn't seem to be any question in our mind as to the status, and we would make that clear to you. It is our position that they all have been replaced, that they are not employees of this company.

Mr. Kraal: Well, we take the position that they haven't been replaced.

Mr. Hughes: Well, we are operating at full capacity, Mr. Kraal. We have a sawyer and all positions in the plant are filled and have been since the early days in August. Now, not very many sawmills have a relief man for each job, in the plant. I wanted to get that one clear, Jim, so you can now——

Mr. Howden: Well, there is no use going any further if that is that way.

Mr. Giustina: In other words it all boils down to the unfair labor charge and until that is cleared you refuse to negotiate on the 7½ cents.

Mr. Kraal: Now, just a minute, Nat. If you mean by that statement that until such time as the Government, the National Labor Relations Board disposes of that charge that we feel that we just won't talk to you, then that is wrong. That isn't what we say.

Mr. Giustina: In other words, you will not talk

about the 7½ cents——

Mr. Kraal: As far as we are concerned, it is just as possible today, as it was on the 20th day of June, for the two of us, and our committees to sit down and run our own business. You know, it is still possible to do that today, provided that the company is willing to do it. We are willing to try to do it. We are not saying that we are just going to sit here and keep the pickets on this mill until such time as the National Labor Relations Board decides the dispute which we have put in their hands. That isn't what we are saying.

Mr. Giustina: What are you saying?

Mr. Kraal: We are trying to say that if we can mutually agree, on the various points of the dispute between the Union and the Company, which includes the 7½ cents, or some amount of increase.

Mr. Hughes: There is no dispute on our part as to the 7½ cents.

Mr. Kraal: You stated 7½ so I mention it. We can come around to the point in negotiations, in our opinion, that we are willing to try to do that, to clear up all the matter that is before the Board in the litigations, and so forth.

We haven't offered to do that up until now, but we assumed that you realized that that would be possible, and we have realized it all the time, and we still do.

Mr. Hughes: Well, all the differences you are referring to, Mr. Kraal, are differences that are now pending before the Board, correct?

Mr. Kraal: Well, I don't know of any others.

any other disagreements between us, other than what is covered by those cases before the Board. Of course, the cases before the Board doesn't cover any increase in wages. That is a matter that is covered by other — by the Governor's panel, and the mechanics that have been gone through on that score.

Mr. Hughes: Well, we are not a party to that.

Mr. Kraal: To some extent it is covered, I don't mean that this company is bound by it, or that the Union is bound by it, if they don't care to be. The Union, as a whole, which has been made public in the paper, the A. F. of L. Lumber and Sawmill Workers have agreed, and it has been publicized in the paper, that we are recommending as a settlement to the wage dispute, but it just so happens that we have some other disputes between us here besides wages, and that is what I have been trying to say, about four or five times, that we have got a little bigger job to do here than just to settle the wages now. And if we go at in the way that I think we should, we will settle it in its order. We will settle those things that must be settled first and then we come up to the wages, and when that is settled, as far as I know, that is all the dispute that there is between us and the company.

Mr. Hughes: Mr. Kraal, as far as the 7½ cents an hour increase is concerned, we do not regard our offer to grant that increase as prejudicing any right or remedy, or anything the Union desires to do whatsoever. We do not consider that as a waiver on your part of the unfair labor practice charges

which you have seen fit to bring against the company.

Mr. Kraal: Well, you might not consider it that way, but I would. I would certainly consider it quite a waiver of several other questions, if we sit down here with you this morning and tell you, you go ahead and pay your scabs 7½ cents. We are just not negotiating for that kind of people you see.

Mr. Hughes: Oh, I see.

Mr. Kraal: Ordinarily.

Mr. Hughes: Oh, I see. Then, it is because you don't really like the attitude or the actions of the employees of this company that you are refusing to agree——

Mr. Kraal: I am not saying the employees of the company, I am saying the company itself.

Mr. Hughes: Well, you refer to them as "scabs".

Mr. Kraal: I just don't like the attitude of the company. Neither does the Union like it. It isn't just me personally.

Mr. Hughes: Well, Mr. Kraal, if you don't like the attitude of the company, and it is — and your dislikes of the company are the only things that are keeping you from agreeing to this wage increase, don't you think that you are hurting the employees in the collective bargaining——

Mr. Kraal: I just don't care to tell you how I feel. If you don't understand what I think about it now, you never would, and I am not going to answer you any more on that. I will keep quiet.

Mr. Hughes: You don't desire to talk about that.

Mr. Kraal: Not the 7½ cents, I don't.

Mr. Hughes: You raised the point, Mr. Kraal, in your discussion of scabs, and the attitude of the company. I just wanted to be sure that I understood——

Mr. Kraal: Well, I might have raised the point right here, but the fact—I didn't raise the fact, you did. You made it a fact; I didn't.

Mr. Hughes: Yes. I called attention to your statement, Mr. Kraal. Well, it seems abundantly clear——

Mr. Kraal: I didn't operate the mill, so—so, you did.

Mr. Hughes: That is correct, and we are still operating it.

Mr. Kraal: O.K. Well, they couldn't have been here without your sanction.

Mr. Hughes: But, Mr. Kraal,——

Mr. Kraal: It couldn't have been operated in the manner that it has been without the sanction of the company.

Mr. Hughes: Certainly, Mr. Kraal, but——

Mr. Kraal: And therefore, I am not taking the responsibility for it. I am not about to.

Mr. Hughes: Mr. Kraal, we are not aware of any law or regulation, or rule, or anything else that requires an employer to cease doing business because of the wishes of the District Council, or anyone else.

Mr. Kraal: Well, there is probably a lot of things that you don't seem to be aware of.

Mr. Hughes: Quite possibly that is correct, Mr. Kraal.

Mr. Howden: Coming back to another point. The men out on that picket line are no longer employees of this company. That is your position.

Mr. Hughes: That is right. They have been replaced.

Mr. Howden: They have been replaced, and have no job now, or in the future with this plant.

Mr. Hughes: Well, now,——

Mr. Howden: Well, not now or in the future, but now, or if—not in the future, because I don't think that even you would take that position, because there are one or two of them you might want back. But they are not employees now, and if we were just to remove the picket line, you would not put them back on in force, and as an employee of the company.

Mr. Hughes: If you mean, Mr. Howden, if Local 2611 would remove the picket line, and the men who were on picket duty would be brought back to the company and replace those men who are now working here, we are not willing to do any such thing at all.

Mr. Kraal: Well, do you have——

Mr. Hughes: In other words—may I finish up this statement? In other words, Mr. Howden, this company is not willing to discharge those replacements who are actively employed here at this time, in order that those persons who are on strike may return and once again become employees of this company.

As far as future employment is concerned, obviously, at any time that a man desires to apply for

work at this plant, he has a right to do so. If there is a job open at that time, we would certainly give anyone full consideration for that job. Does that answer your question?

Mr. Howden: That answers my question.

Mr. Hughes: Now, Mr. Kraal, you had one.

Mr. Kraal: Yes, I wanted to ask you this question. Do you have a proposition that you wish the Union to consider that you could put into writing so that it could be considered?

Mr. Hughes: We are agreeable to reducing to writing a statement to this effect. The Company offers and the Union accepts a 7½ cent an hour wage increase effective January 1, 1955, to all employees, on the payroll, excepting guards, clerical employees, supervisors, and others who aren't under the Union.

Mr. Kraal: The way you worded that——

Mr. Hughes: I beg your pardon.

Mr. Kraal: The way you worded that, if I didn't misunderstand you in your statement. The way you stated that, that if Howden and I would say, o.k. we agree to it, you can do it. Then you would put it in writing so that the union could see it. Or would you put it in writing that you are willing to do that if the union will accept it.

Mr. Hughes: Any agreement that is reached between the Union and ourselves, we are willing to reduce to writing and sign.

Mr. Kraal: Well, are you willing to submit your proposition to the Union in writing, without any

agreement on it, so that the Union could consider it, and see whether they will accept it.

Mr. Hughes: Do you think that if the Company made such a proposition as this, that they would back out on it?

Mr. Kraal: I think that it is customary for any party that is willing to make an agreement, to submit it in writing for consideration by the other party. And that is what I am asking you. Are you willing to do that today?

Mr. Hughes: If requested——

Mr. Kraal: Do you have any proposition that you are willing to submit in writing so that it can be studied and decided whether it will be acceptable or not?

Mr. Hughes: If requested by the Union, we are willing to reduce to writing an agreement to the effect that we will institute a 7½ cent an hour wage increase effective January the 1st, 1955.

Mr. Kraal: You are not willing to submit a proposal for that agreement?

Mr. Hughes: Oh, I wouldn't deny——

Mr. Kraal: Or an agreement of any kind.

Mr. Hughes: Oh, I wouldn't deny that we would be agreeable. We would certainly consider the submission of it. Would you like to submit something for our consideration?

Mr. Kraal: Well, I would suggest that if you have something in mind that you would like to have acceptable by the Union, why don't you do that?

Mr. Hughes: Well, from your statement earlier in the day, I was under the impression that you

were unwilling for us—that you did not agree to the institution of the 7½ cent an hour wage increase.

Mr. Kraal: Well, you misunderstood me entirely.

Mr. Hughes: I am sorry.

Mr. Kraal: I am unwilling to agree with anything.

Mr. Hughes: You what?

Mr. Kraal: I will not make an agreement with you on any 7½ cent or any other amount of increase in wages at the present moment, but I certainly wouldn't try to tell you that you have no right to submit a proposal.

Mr. Hughes: You have changed——

Mr. Kraal: For whatever you might have in mind.

Mr. Hughes: You changed your position didn't you, Mr. Kraal. You are changing your position?

Mr. Kraal: No, I am not changing it either.

Mr. Hughes: It seems to me you are.

Mr. Kraal: It is hard for me to understand you. It always has been.

Mr. Hughes: Apparently. I think I can understand you, though, some of the time.

Mr. Kraal: If you have a proposition that you would like the Union to consider, and furthermore, that you would like the Union to agree with you on, why don't you submit it to us at this time? It will be considered.

Mr. Hughes: Are the representatives of Local 2611, that are here at this meeting agreeable to the

consideration of a wage increase of 7½ cents an hour, effective as of January the 1st——

Mr. Kraal: Well, how would I know.

Mr. Hughes: Well, you are one of the representatives.

Mr. Kraal: How would I know whether they are or not?

Mr. Hughes: You are one of the representatives. Don't you understand what I say, Mr. Kraal?

Mr. Kraal: I am not a crystal-ball gazer, though.

Mr. Hughes: Oh, I see.

Mr. Giustina: All he asked was consideration.

Mr. Kraal: I am telling you that if you have a proposition to make the Union, submit it in writing, and it will be considered, and you will have your answer before very long.

Mr. Hughes: Did you have something to say, Mr. Howden: Did you want to reiterate what he was saying?

Mr. Howden: I wanted to bring it down in a few shorter words.

Mr. Hughes: Well, go ahead and do so, if you would like to.

Mr. Howden: Well, it has been said.

Mr. Hughes: Is there anything else you care to discuss at this time, Mr. Howden?

Mr. Howden: Not that I know of. I note that this is being played on a machine. Could there be a transcript made of that and sent to me?

Mr. Hughes: If you are willing to pay your share of the cost, certainly.

Mr. Howden: If there is one going to be made, yes.

Mr. Hughes: If you would like a copy, Mr. Howden, we would be very glad to furnish one to you. Of course, we understand that you will take care of your pro rata share of it. It won't be a great sum.

Mr. Howden: Well, that is what I realize. And I will state here so you can get it on that, that I will pay for it. And this is not the Union will pay for it, I will pay for it.

Mr. Hughes: I was going to comment that probably you were obligating the Union or yourself for something here without the approval of the Local.

Mr. Howden: I realize that.

Mr. Hughes: That would be inconsistent with Mr. Kraal's position that he can't do such.

Mr. Howden: I couldn't do such.

Mr. Hughes: Well, is there anything further then than that, that you have to discuss at this time.

Mr. Howden: No.

Mr. Hughes: Do you have anything further, Mr. Kraal?

Mr. Kraal: No.

Mr. Hughes: I think you have made your position quite clear.

Mr. Kraal: It is your move, in my opinion.

Mr. Hughes: What was that?

Mr. Kraal: It is your move. Whatever you have that you want considered, give it to us so that we

can not be mistaken about what you mean, and we will consider it.

Mr. Hughes: I suggest we recess this meeting pending any new propositions or proposals the company has, or the Union has, or any consideration either party cares to give to the proposals made by the other party. Is that agreeable to you, gentlemen?

Mr. Kraal: We recess it how long? Until either party has some other idea?

Mr. Hughes: Which would have to be at a reasonable time.

Mr. Kraal: Well, I think that is a good idea.

Mr. Hughes: You don't have any objection to that, do you?

Mr. Kraal: No. No. I don't. There is no use sitting here, if we aren't getting anywhere.

(Whereupon, the meeting was recessed.)

RESPONDENT'S EXHIBIT No. 4

Request for Special Meeting

Albert R. Gregg

President, Local Union No. 2611

Lumber and Sawmill Workers, AFL

1251 "M" St., Springfield, Oregon

Brother President:

We, the undersigned members in good standing of Local No. 2611, Lumber and Sawmill Workers, AFL, request that a special meeting of the membership of Local No. 2611 be called on Saturday, July 24, 1954 at 7:30 P. M. for the purpose of withdraw-

ing from the Willamette Valley District Council its authority to represent Local No. 2611 in the current wage negotiations and take such other action as is consistent and necessary under the existing situation.

/s/ Louis A. Nielsen
/s/ Earl M. Vaughan
/s/ George Rohrbacker
/s/ W. J. Priest
/s/ John E. Costello
/s/ Joe Evoniuk
/s/ Glenn L. Winey
/s/ Oliver L. Dorsey
/s/ Levi B. Churchill
/s/ Edwin H. Peterson
/s/ Alva L. Robertson

(Copy) : Leland J. Howden, Business Agent

RESPONDENT'S EXHIBIT No. 5

Memorandum of Understanding Between Local
#2611 and Giustina Bros. Lumber Co.

Second Shift

As the second shift is to be on a temporary basis, men moving from the first shift to the second shift, and men moving on the first shift, shall at the termination of the second shift return to their former positions, and advancements of permanency shall come at that time.

After the termination of the second shift, men shall be called back in the order of their original

hire, taking into consideration their ability to do the job required.

Men called back within one month of termination shall be entitled to continuous employment.

Night shift is to be terminated on a week-end.
To be posted

[Title of Board and Cause.]

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Mr. Patrick H. Walker, for the General Counsel.
Mr. Richard R. Morris, of Portland, Oreg., for the Respondent. Mr. Donald S. Richardson, of Green, Richardson, Green and Griswold, Portland, Oreg., for the Union.

Before: Maurice M. Miller, Trial Examiner.

Statement of the Case

Upon an original charge and amended charge, each duly filed and served, the General Counsel of the National Labor Relations Board, in the name of the Board, caused the Regional Director of its Nineteenth Region, at Seattle, Washington, to issue a Complaint and Notice of Hearing on December 20, 1954, against Giustina Bros. Lumber Co., designated as the Respondent in this report, under Section 10 (b) of the National Labor Relations Act, as amended, 61 Stat. 136. The respondent was charged, therein, with the commission of unfair labor practices under Section 8 (a) (1) and (5) of the statute. Copies of the aforesaid Complaint, the

Notice of Hearing, and the applicable charges were duly served upon the firm involved. Thereafter, however — upon a second amended charge duly served under the statute — the General Counsel caused the issuance of an Amended Complaint by the Regional Director on April 19, 1955; copies of the Amended Complaint and the second amended charge were, again, duly served upon the respondent employer.

The Complaint, as amended, alleged in substance: (1) that Local 2611 of the Lumber and Sawmill Workers, AFL, a labor organization—to be designated as the Union in this report—was entitled, at all material times, to act as the exclusive bargaining representative of the Respondent's employees within a unit appropriate for the purposes of a collective bargain, and that it is still so entitled; (2) that strike action was instituted against the Respondent by the Union, on or about June 21, 1954, for economic objectives; (3) that the Respondent, between July 28, 1954, and September 2, 1954, undertook certain action which interfered with, restrained, and coerced its employees in the exercise of rights statutorily guaranteed; (4) that certain aspects of the Respondent's conduct, as set forth, reveal its failure and refusal to bargain in good faith with the Union as the exclusive representative of its employees in a unit appropriate for the purposes of a collective bargain; (5) that the Respondent's course of conduct converted the Union's strike action into an unfair labor practice strike, and prolonged it; and (6) that the Union, on January 19,

1955, unconditionally requested the Respondent to reinstate certain named strikers immediately, and that the Respondent refused, and has continued to refuse, to reinstate these employees to their former, or substantially equivalent, employment. This course of conduct, it is alleged, involved a refusal on the part of the Respondent to bargain in good faith, discrimination in regard to the hire and employment tenure of its striking employees to discourage union membership, and interference, restraint, and coercion directed to the aforesaid employees.

The Respondent's Answer—as filed at the outset of the hearing, without objection, and subsequently amended—admitted the jurisdictional allegations of the Complaint and the General Counsel's description of the unit alleged to be appropriate for the purposes of a collective bargain. The status of the Union as a “collective bargaining representative” of the Respondent's employees within an appropriate unit, prior to June 21, 1954, was conceded; the Answer, however, placed in issue the alleged status of the Union as the exclusive bargaining representative of the employees in a unit appropriate for the purposes of a collective bargain on or after June 21, 1954, when the Union economic strike began. The allegations of the Amended Complaint with respect to the Union's institution of strike action were admitted. The Respondent, however, denied the commission of any unfair labor practices, as charged by the General Counsel, and specifically denied that the course of conduct attrib-

uted to it in the Amended Complaint had converted the Union's strike for economic objectives into an unfair labor practice strike, which was thereafter extended and prolonged until its termination on January 19, 1955, by the labor organization. The Respondent admitted a refusal to reinstate certain persons to their former employment, on or after the indicated date, but denied every other aspect of the General Counsel's allegation in this connection.

(As issued and served, the Amended Complaint had listed 133 employees allegedly denied reinstatement by the Respondent, after the Union's unconditional request on January 19, 1955, for the restoration of their employment status. At the hearing, three names were stricken from the list, upon the General Counsel's motion, and two names were added. The Respondent made no objection; its Answer may be taken as a denial of liability with respect to the individuals named in the last amendment.)

By way of affirmative defense, the Respondent alleged, upon various grounds, that a question existed, after July 15, 1954, as to whether the Union still represented a majority of the Respondent's employees within the unit conceded to be appropriate for the purposes of a collective bargain. In addition, the Respondent alleged that the strike action sponsored by the Union had involved a breach of the labor agreement then in effect between the firm and the labor organization, that the Respondent had then taken steps to terminate the agreement, and

that the Union's action constituted an unfair labor practice within the meaning of the Act, as amended.

Pursuant to notice, a hearing was held before me, as the duly designated Trial Examiner, at Eugene, Oregon, on May 9 - 11, 1955. Each of the parties was represented by counsel. Each was afforded a full opportunity to be heard, to examine and cross examine witnesses, and to introduce evidence pertinent to the issues. At the outset of the case the General Counsel moved to strike certain allegations embodied in the Respondent's affirmative defense, and further moved that it be required to make certain portions of the affirmative answer filed more definite and certain. The motion to strike was denied. A decision with respect to the motion that the Respondent's affirmative answer be made more definite and certain was deferred, in anticipation of an Amended Answer to be filed; upon its receipt, however, the motion was not pressed, and the record fails to reveal its disposition.

(For the record, an in order to assure its completeness in this connection, the motion is now denied.)

At the conclusion of the testimony, the parties were advised of their right to argue orally upon the record, and to file briefs or proposed findings and conclusions; oral arguments were waived, however, and the parties indicated their intention to file briefs. The briefs have been received and considered.

Upon the entire record in the case, and my observation of the witnesses, I make the following findings of fact:

Findings of Fact

I. The Business of the Respondent

The Respondent, Giustina Bros. Lumber Co., is an Oregon corporation engaged in the processing of lumber and lumber products, with its principal offices and place of business in Eugene, Oregon. In the course of its business, the Respondent produces and ships in commerce products valued in excess of \$100,000 annually, among the several states of the United States other than the State of Oregon.

The Respondent has conceded, and I find, that it is engaged in commerce within the meaning of the Act, as amended. In the light of the available evidence, and in accordance with the Board's newly established policy — see *Jonesboro Grain Drying Cooperative*, 110 NLRB No. 67, 35 LRRM 1038— I find that the assertion of the Board's jurisdiction in this case would be warranted to effectuate the objectives of the statute.

II. The Labor Organization Involved

Local 2611 of the Lumber and Sawmill Workers, AFL, to be designated as the Union in this report, is a labor organization within the meaning of Section 2 (5) of the Act, as amended, which admits employees of the Respondent to membership.

III. The Unfair Labor Practices

A. Background

There is a suggestion, in the record, that the Union, or a sister organization, may have represented the Respondent's mill and pond employees

since 1938, and that it may have been recognized as their representative, by the Respondent, since that date. Whatever the situation may have been from 1938 to 1943, however, the record with respect to more recent years is clear. Between March 31, 1943, and June 21, 1954, I find, the Respondent recognized and dealt with the Union, under successive trade agreements, as the "sole" and exclusive representative of its employees in a bargaining unit defined by stipulation as follows:

All employees at the Respondent's sawmill and planing operations in Eugene, Oregon, and the log dump and pond located at Springfield, Oregon, excluding office and professional employees, guards, and supervisors as defined in the Act.

As of June 20, 1954, these employees were 220 in number. The most recent revisions of the trade agreement executed for the benefit of the employees became effective on May 8, 1953: the agreement remained in force until April 1, 1954, and was automatically extended to April 1, 1955, by virtue of the failure of either party, apparently, to give written notice to the other, at least seventy-five days prior to its indicated terminal date, of any intention with respect to its modification, revision, adjustment, or termination.

B. The Contract

Under Article II of the agreement, the Union undertook to elect and maintain a Plant Committee to represent the employees, and the Company un-

dertook, reciprocally, to appoint and maintain a committee as its representative. The parties agreed that these committees would meet "to analyze and adjust all complaints arising out of the collective bargaining relationship" between them. In the event of any inability on the part of the Plant Committee to adjust a "grievance" under the contract, it was accorded the right to call upon representatives of the Union and/or representatives of its hierarchical superiors, the Willamette Valley District Council, the Northwest Council of Lumber and Sawmill Workers and the United Brotherhood of Carpenters and Joiners of America, for assistance. The agreement went on to provide that if any grievance could not be adjusted through these representatives, a "joint board" should be created, ad hoc, with three members to be named by each contracting party; the joint board, under the contract, would be required to submit a "proposal" for the settlement of the dispute which had led to its creation.

Additionally, under Article II of their agreement, the parties specifically established the procedure to be utilized for the adjustment of "employee grievances" as contractually defined. The contract provided, inter alia, for the submission of such grievances, in written form, to the Respondent—within certain specified time limits—and for the submission of a copy to the Plant Committee previously designated. Although the procedure to be followed with respect to "employee grievances" after their submission was not contractually detailed, the agreement revealed an obvious intent that the Plant

Committee and the company committee should meet to discuss the grievance; it provided, for example, that any employees involved in a grievance "will" attend such meetings.

Article IX of the agreement dealt with strikes and lockouts. Its provisions in this connection read as follows:

The Company and the Union agree that the grievance procedures specified hereinabove in Article II are adequate to provide a fair and final determination of all grievances arising under the terms of this agreement. Therefore, during the life of this agreement no strike shall be caused or sanctioned by the Union or any of its members and no lockouts shall be entered upon by the Company until every peaceable method of settlement of the difficulties involved, as provided hereinbefore in Article II, shall have been tried and the parties hereto have been unable to resolve their differences.

Under the agreement, if unable to reach a mutually satisfactory solution of any issue after the exhaustion of the contractually established grievance procedure, each party was required to provide the other, within specified time limits, with a written statement of its position in the dispute; upon the exchange of these statements, the party desirous of engaging in a strike or lockout was required to give five days' written notice of its desires in that regard, and a written statement specifying in detail

its current position on the issues in controversy. The party receiving such a notice and specification was required to furnish, anew, a written statement of its position on the matter in dispute, at the time of its receipt of the notice. In the event of any violation of these contractual provisions, by a "strike, work stoppage or interruption or impeding of work" in the Respondent's plant, the agreement provided that no grievance should be discussed or processed for the duration of the violation. The Union, under the agreement, was contractually obligated to endeavor to secure a return of any strikers to work, in order to facilitate a peaceful settlement of the dispute in accordance with contractually established procedures, and the Respondent's reserved right to discipline the employees involved in any violation of the agreement in this respect was recognized. Article IX concludes with a commitment, however, that Union employees shall, at no time, be required to act as strike breakers.

With respect to its termination, as previously noted, Article XIII of the agreement provided for lapses on the first of April in 1954 and subsequent years, subject to its automatic renewal from year to year, however, in the absence of written notice, within a given time limit, with respect to the desire of either party to modify, revise, adjust, or terminate their contractual relationship.

Within the limits thus established, with respect to termination, Article VIII of the agreement also contained a specific provision with respect to the

renegotiation of wage rates. In this connection, the agreement provided that:

Wages shall continue subject to the right of either party to request a general wage change by giving the other party written notice of its desire for such general wage change. Negotiations shall commence within fifteen (15) days from the date the notice is received.

There was no provision in the agreement, as revealed by the present record, calculated to define, specifically, the relationship between such wage negotiations and the procedure established for the analysis and adjustment of "complaints" arising out of the collective bargaining relationship, or the settlement of grievances. Nor does analysis reveal any definite connection between a possible impasse or "deadlock" on wage issues and the contractually established procedure, previously noted, with respect to the agreement's modification, revision, adjustment, or termination.

C. The Collective Bargaining Relationship

At all times material, the Respondent was a member of the Willamette Valley Lumber Operators Association, to be designated as the Association in this report. Insofar as the record shows, it still holds Association membership. This organization, as the evidence shows, functions under Oregon law as a non-profit corporation. Its membership is limited to individuals or business enterprises engaged in a forests products industry. On the basis of a stipulation by the parties, it is possible to infer, and I

do infer, that the Association exists, at least in part, to serve the interests of its membership in labor relations matters. From time to time, as the stipulation shows, members of the Association may delegate limited authority to a committee, drawn from their number, to negotiate with the bargaining agents of their respective employees.

(According to the labor relations director of the Respondent, whom I credit in this connection, the firm has, in the past, conferred such limited authority upon the Association or an Association committee; these grants of authority have not encompassed any power to bind the firm. Nor have they been continuing grants; on each occasion, as required, the Association has been separately authorized to act for the respondent employer.)

The Union, at all material times, was affiliated with the Willamette Valley District Council of Lumber and Sawmill Workers, previously noted, to be designated as the District Council in this report; the record reveals that it has maintained that affiliation. This organization has been identified for the record, in turn, as an unincorporated association of local labor organizations, chartered by the United Brotherhood of Carpenters and Joiners of America; at all times material, I find, it has been engaged in the promotion and protection of the interests of employee members of its constituent local unions. Specifically, I find, it has represented the Union and its other constituent locals in labor disputes and collective bargaining negotiations with Association committees, as previously noted, and

various Association members and other lumber industry employers.

(There is testimony in the present case that authority to negotiate with the Association, its member firms and other lumber industry employers in the Union's behalf, with respect to wages specifically, had been given to the District Council in 1948 pursuant to the formal instructions of the Union membership; witnesses connected with the Union testified, without contradiction, that its grant of authority had not been limited in duration, and that it was still effective at the time of the events immediately involved in this case. The record shows, in this connection, that the Union, at its meeting of February 4, 1948, had authorized the Union's secretary to notify the District Council of its desire that the Council continue negotiations with the operators for a wage increase, in excess of the sum embodied in a pending offer. Pursuant to these instructions, I find, the Union's recording secretary had, on February 5, 1948, advised the Willamette Valley District Council that it was "instructed" to continue negotiations for "further increases" in wages. Copies of his letter may have been sent, also, to firms under contract with the Union; as to this, however, the record is not entirely clear. Although the motion adopted by the Union, previously noted, and its letter, would seem to have been limited, in their context, to a grant of authority with respect to negotiations for a 1948 wage increase only, the representatives of the Union and the District Council apparently construe them as an indefinite grant of

authority to the Council, at least with respect to the negotiation of general wage issues. Such a construction, when shared by the purported principal and agent involved, would seem to be immune to challenge, at least on the part of a stranger to the relationship. I find, therefore, that the District Council was, at all material times, the designated agent of the Union and its membership, in the wage negotiations now to be noted.)

D. Preliminary Negotiations

On February 10, 1954, Eldon Kraal, the executive secretary of the District Council, dispatched a form letter to the Respondent under Article VIII of the Union's agreement with the firm. It read as follows:

Please be advised that the Willamette Valley District Council wishes to notify you that we wish to open negotiations for an increase of wages for all of your employees who are represented by our union.

We will appreciate the opportunity to discuss this matter with you or your representatives at an early date. (Emphasis supplied.)

Copies of the same letter appear to have been sent to a number of other Willamette Valley lumber operators under union contract. I so find.

(The testimony of Executive Secretary Kraal establishes, without contradiction, that approximately 79-80 operators maintained contractual relations with constituent locals of the District Council,

at the time, and that all were served with wage demands.)

In a letter dated February 20, 1954, the District Council was advised by the Respondent that its letter of February 10th had been received. The firm's response went on to declare, however, that the District Council had no status as the "bargaining agent" of its employees, with authority to open negotiations on any subject. In reply, on March 10, 1954, the Respondent was advised by letter—over the signature of Leland James Howden, the Union's financial secretary and business agent—that the District Council had been authorized by the Union to "open and negotiate" wage issues in its behalf; that the Council was still authorized to do so; and that it would continue to hold such authority in the future in the absence of any contrary indication on the Union's part. Howden expressed the hope, therefore, that the Respondent would, in the near future, enter into negotiations with the District Council in regard to the wage issue.

(There is a suggestion, in the record, that various other lumber operators in the Willamette Valley, upon receiving the District Council's letter of February 10th, had expressed their doubts—as the Respondent had—with respect to the authority of the Council to open negotiations on the wage issue. Notes similar to the Union's letter of March 10th, previously cited, were sent, I find, to a number of employers.)

On April 9, 1954, the executive secretary of the District Council addressed another form letter to

the Respondent—and presumably to various other employers—calling attention to the Council's earlier February letter as one in which that organization had "requested a meeting" with the firm or its representatives to discuss the matter of a wage increase for all of the employees the union represented. In the absence of any negotiations prior to the 9th of April, the Respondent, among others, was advised that its attitude had led the Council to conclude that it was involved in a refusal to bargain in good faith with authorized Union agents. Again, on behalf of the District Council, Executive Secretary Kraal requested that he be given an opportunity to meet and discuss the matter of a wage increase at an early date.

Subsequently, on April 13, 1954, the Respondent dispatched a letter to the District Council signed by Sam E. Hughes, its labor relations director. The letter read as follows:

We have your letter of April 9, 1954. We fail to find in your letter of February 10, 1954, a request, as alleged, for a meeting to discuss a wage increase for our employees.

You are hereby notified that we are authorizing a committee of Willamette Valley Lumber Operators Association to represent us, until further notice, in the discussions contemplated by your letter. You are further notified that the Association's committee is not authorized to reach any agreement binding upon us and that conclusions reached jointly by it and the authorized representatives of

our local union are to be submitted to us for consideration.

Thereafter, on April 28, 1954, and possibly as a result of this letter, negotiations between an Association committee and the Council with respect to the wage issues then in controversy, began.

(A copy of the letter quoted appears to have been sent to the Association. I so find. Insofar as the record shows, this communication constituted the only objective evidence available to the Association or any of the parties with respect to the Respondent's designation of the operator's group to represent it in the 1954 wage negotiations.)

At the time, I find, Natale Bernard Giustina, the Respondent's president and general manager, was a member of the Association's board of directors—and had served as one for five or six years. Sam E. Hughes, the Respondent's labor relations director, was appointed to the Association's negotiating committee; on April 28, 1954, he was a member of the group which met with the District Council's representatives, as noted.

E. The Prelude to the Strike

Various references in the record suggest that the negotiations thus initiated by the Association and the District Council, with respect to the wage issue, were part of a larger series involving other operator associations, other organizational units of the Lumber and Sawmill Workers, AFL, the International Woodworkers of America, CIO, and various employers whose employees were repre-

sented by one or another of these “rival” labor organizations.

(At the time, I find, it was a matter of common knowledge in the Pacific Northwest that wage issues in the lumber trade were being negotiated on an “industry-wide” basis, and that practically every employer in the trade, privy to a labor agreement with an AFL or CIO organization, had been confronted with a wage demand. These negotiations were extensively discussed, in the local press and elsewhere. I find it appropriate, therefore, to take official notice of the fact that the Respondent’s indirect involvement with the Union—as previously indicated—constituted a part, only, of the larger series of negotiations, to all intents and purposes “industry-wide” in scope.)

As of April 26, 1954, I find, the Respondent had instituted a second shift at its Eugene sawmill and planing mill. And some questions arose, apparently, with respect to the “seniority” and employment rights of employees transferred or assigned to the second shift by the firm, and the disposition to be made of their claims with respect to further employment, in the event of a termination of the shift.

(The testimony of the firm’s production manager establishes that the second shift operation required almost as many men as the established first shift.)

On June 7, 1954—while the wage negotiations were pending—representatives of the Respondent and the Union met, at the request of the latter, to dis-

cuss certain grievances and the second shift problem. The Union, as the record shows, had previously presented a prepared "Memorandum of Understanding" as its proposal with respect to the second shift issue.

(The evidence establishes, beyond dispute, that this memorandum had been grounded in a Union acknowledgment that the second shift would be on a "temporary" basis. I so find.)

There is some evidence in the present record that the Union's proposal was discussed. No information with respect to its fate, however, is available.

(Hughes, as a witness, took the position that the proposal became "moot" when the Respondent reached its decision, later, to discontinue the second shift, and that the firm, therefore, never had to discuss it.)

In the course of the discussion, however, the Union's demand with respect to a wage increase also appears to have been mentioned. Sam Hughes, I find, attempted to explain, at length, why the Respondent would not be able to meet the Union's demand; the record, however, gives no indication of any reply by a Union spokesman. And at some point, apparently, Natale Giustina raised a question as to whether the Union negotiators were free to discuss the wage issue. He was advised that they could not do so, since their authority to negotiate with respect to such matters had been "given" to the District Council of their organization. Giustina was also taxed, I find, with his own inability to

negotiate. Upon his declaration that he was “ready, willing and able” to negotiate, the Respondent’s president was advised by a Union spokesman that he had given authority to negotiate the wage issue to the Association, and that he could do nothing about it. The testimony of Natale Giustina with respect to his reply, which I credit, reads as follows:

* * * I said, “The hell I can’t. The association doesn’t tell me or any other operator what we have to do,” and I repeated, “All I have to do is pick up the telephone and tell Mr. Metzger of the association that he no longer represents me, and that I am at this moment, ready, willing and able to negotiate,” if they wanted to talk.

The record reveals no response on the part of a Union spokesman, however, beyond the possible reiteration by Business Representative Howden of his earlier statement that the Plant Committee of the Union could not undertake negotiations with respect to the wage issue. Nor is there any indication, in the record, of any overt action by the Respondent calculated to effect an actual revocation of the Association’s authority to negotiate on wages for the firm.

On June 11, 1954, according to the undisputed testimony of Sam Hughes, which I credit in this connection, Business Representative Howden—in a further conversation at the Respondent’s plant—reiterated the Union’s position with respect to its inability to negotiate the wage issue directly.

(In substance, I find, Hughes was advised that if the Respondent persisted in its attempt to negotiate the wage issue with the Union's Plant Committee, without regard to the District Council's "right" to negotiate such questions, there might be a strike prior to the deadline previously announced.)

Thereafter, on the 17th of June, representatives of the District Council and the Association met to renew negotiations with respect to the wage issue. Hughes, as a member of the Association committee, was present. The record is silent, however, with respect to the discussion which then eventuated.

On the 20th, Natale Giustina was visited by Howden, in his capacity as a District Council emissary; he was asked if he wished to make a wage offer, which could be reported to the Council, and replied that there would be none. This appears to have ended, for the time, direct negotiation between the Respondent and any Union or Council representatives in regard to the wage issue.

(There were additional negotiations, I find, between the Council and the Association committee on July 13 and August 4, 1954. Despite the protestations of President Giustina as to the ease with which he could terminate the Association's status as his representative, the record establishes that Hughes sat as a member of the Association's committee on each of the occasions noted.)

F. The Strike

On June 21, 1954, the Union undertook strike action against the Respondent. Picket lines were

established at the premises of the Respondent in furtherance of the Union's wage demand. Insofar as the record shows, the pickets appear to have been orderly, and the picketing appears to have been peaceful, at all times. No contrary contention has been made.

(The record shows that the strike at the Respondent's plant constituted part of an "industry-wide" strike, so-called which involved every firm in the Pacific Northwest lumber industry under contract with an AFL or CIO affiliate, exclusive of any firms which had settled prior to the strike deadline on some basis acceptable to the particular labor organization representing their employees. I so find.)

On the 28th of June, at the instance of the Respondent, a conference was held with various Union representatives at the firm's Eugene plant. The record establishes that the Respondent was motivated by a desire to ascertain the wishes of the Union, and its employees, in regard to the deduction of "hospitalization dues" for the month of July from the final pre-strike pay checks of the employees, then in the process of preparation. An agreement that such hospitalization premiums might be withheld appears to have been readily reached. Business Representative Howden, I find, then declared that he would be willing to communicate a wage "offer" to the District Council of his organization. In reply, however, Natale Giustina announced that there would be no offer, except for a statement that the Respondent would be ready

and willing to resume operations on the basis of the wages and working conditions in effect when the strike began. Howden indicated that the District Council would not find such an offer acceptable. As the conference broke up, President Giustina, I find, asked Howden if the Union's contract with the Respondent was still in force, and Howden replied in the affirmative. On this note, the discussion ended.

(Giustina's testimony with respect to this exchange is couched in obverse terms; he claims that he asked whether Howden considered the contract broken, and that the business agent gave a negative reply. The variance may be dismissed as immaterial.)

On or about July 24, 1954, about thirty-five non-supervisory employees of the Respondent met at the home of one of their number, to discuss a petition that the Union call a special meeting and undertake action to have its bargaining rights with respect to the wage issue "returned" by the District Council; in the event of a failure to achieve this objective, the employees present discussed an attempt to return to work at the Respondent's plant despite the presence of the Union pickets.

(My conclusion that such a meeting occurred on or about the 24th of July is based upon the stipulation noted for the record, to which reference has previously been made. Independent evidence offered by the Respondent establishes that eleven Union members—a group including Alva Robertson and Glenn L. Winey, among others—presented

a written request, at or about this time, to the Union's president that a special meeting of the Union membership be held on the evening of Saturday, July 24, 1954, for the purpose of "withdrawing" the District Council's authority to represent the Union in the wage negotiations then current, and for the purpose of taking such other action as might be consistent and necessary under the circumstances. Temporal considerations, therefore, suggest that the written request may have been prepared prior to the 24th of July. No question has been raised, however, with respect to the exact date of its preparation; I find it unnecessary, therefore, to resolve any possible conflict between the stipulation and the evidence offered by the Respondent in this connection.)

On the night of July 28, 1954, the Union membership did meet. No action was taken, however, to "withdraw" the Union's earlier grant of authority to the District Council with respect to wage negotiations.

G. The Meeting at the Plant

After the Union meeting, I find, some of the Respondent's nonsupervisory employees, within the unit herein found to be appropriate for the purposes of a collective bargain, met outside the Union hall to discuss their problems with respect to the outcome of the meeting and the possibility of an attempt to return to work. One of them suggested that the conference be adjourned to the parking lot at the Respondent's plant. When the employees reached the plant premises, however—at about 9:30

or 10:00 o'clock—they found the door of the Respondent's machine shop, adjacent to its employee parking area, open. They entered the shop. Additional employees, I find, arrived subsequently.

(At least twenty-two employees, at one time or another, appear to have been at the shop. A stipulation of the parties, noted for the record, indicates that the number present fluctuated, from time to time, as various employees entered and left the shop.)

Some time prior to the employee assembly now under consideration, I find, a worker by the name of Alva Robertson, previously noted, had telephoned Hughes to advise him of the fact that such an assembly would be held at the Respondent's plant. The only available evidence with respect to the conversation between Robertson and Hughes indicates that Hughes was asked to be present at the Respondent's shop to "answer questions" which the employees might present.

(The testimony in question is that of Hughes. To the extent that it may warrant a conclusion that he was advised by telephone of the fact that a conference or assembly would be held at the plant, I find it credible. His indication that he was merely "invited" to be present, however, in order to "answer questions" may be subject to question as testimony of a self-serving character, under all the circumstances; an evaluation of the situation in this regard may appropriately be deferred, in my opinion, until the available evidence with respect to the

assembly, and his participation in the discussion which took place, is completely set forth.)

Hughes asked if he might bring Natale Giustina and his brother, Ehrman Giustina—the firm's production manager—with him. He was informed that he was free to do so. There is no indication in the record that he interposed any objection to the use of the Respondent's premises for an assembly of its employees.

The meeting was opened by Robertson; with the employees gathered about him in a semi-circle, he referred to the fact that they "knew" why they were there, and went on to report that he had called the "bosses" and that they would "come down" and be available for questions. According to the stipulation, previously noted, he then called Hughes; the latter, accompanied by Natale and Ehrman Giustina thereupon joined the assembly.

(The record does not reveal, definitely, where Hughes and the Giustina brothers were when they were called. There is some testimony, however, that they were in the shop, and in a position to observe employees as they arrived, before they were "invited" to join the assembled employee group. Upon the entire record, I am satisfied that they were already upon the plant property at least; there is no indication that any appreciable period of time elapsed prior to their appearance, with Robertson, at the head of the shop group.)

Before the discussion began, Hughes asked whether everybody who had been invited was present. He was assured that "just about" everyone was there.

(Hughes testified that he had no recollection of any such exchange. Three of the General Counsel's witnesses, however, attributed the inquiry noted to him, in words or substance. And upon the entire record, indeed, such an inquiry would seem to be consistent with his character and the general tenor of his remarks, as revealed in the stipulation previously noted. I find that he raised the question noted, and received an affirmative reply.)

Robertson, however, interrupted to observe that a few employees were present who should not have been there. He requested a conference with Hughes and Ehrman Giustina, and the men, I find, engaged in a brief consultation. Hughes then returned to his position at the "head" of the assembled employees.

(Robertson's reference to the fact that some employees were present who should not have been there, I find, involved four employees present at the invitation of Clifford Johnson, a nonsupervisory worker: Dean E. Sparks, G. Lewis Wright, Orville Bloom, and Johnny Zybach. Their testimony, which I credit, establishes that Johnson had invited them to attend the assembly at the Respondent's plant, shortly after the adjournment of the Union meeting previously noted. In the light of the available evidence, I find that Johnson had referred to the assembly as a "secret meeting" to be held

in the machine shop, adjacent to the parking lot, at the Respondent's plant.)

Turning to the individuals designated by Robertson, Hughes asked if they had been invited. He was advised by Wright that Johnson had extended their invitation. Upon receiving Johnson's confirmation, Hughes asked if everybody at the Union meeting had been invited. He was advised that no general invitation had been issued. Hughes then declared, I find, that:

Before we go any further, I want to state that it is my opinion anyone has a right to present his individual grievance provided the collective bargaining agent has had an opportunity to be present and I'm wondering if Howden knows about this meeting and has had an opportunity to be present if he desires.

He was advised by an unidentified employee that the Union's business representative could have been present if he had wished to attend.

(There is some testimony that Hughes went on to say that it would probably be a "good thing" if Howden were in attendance. Hughes denied any such statement. Upon the entire record and my observations with respect to the demeanor of the labor relations director as a witness, I credit his denial. There is also testimony that Hughes went on to observe, in words or substance, that, "There's no use kidding ourselves, fellows" and that the strike had gone on long enough and it was time to

do something about it. In view of the caution displayed by Hughes in every other context, however, when speaking in the Respondent's behalf—coupled with his meticulous efforts to be “exact” which frequently bordered on the captious—I find it impossible to credit testimony that he made such an open declaration of the Respondent's intent to “do something” about the continuation of the strike. His denial of the remarks thus attributed to him is credited.)

Robertson then suggested, I find, that some of the employees who were “new” to the “idea” which had prompted the assembly, and who had not been thinking about it very long, be permitted to talk. He did not identify the “idea” in question. In the light of his suggestion, nevertheless, Hughes asked the men if they had anything to say. There was no reply. At this point, however, Hughes did not relinquish the assembly's attention; instead, I find, he embarked upon extensive remarks. By stipulation, it has been agreed that he began as follows:

Very well. I sincerely hope that none of you have come here with the intention of just listening to what is going on and then reporting it back to the hotshots. There's an operation up near Bellfountain where they had a couple of men who ran to the District Council every time they heard something; they have a name for those fellows, they call them rats. I hope none of you are going to be called rats by the

fellows you work with. Now, if any of you want to leave I'm sure it will be satisfactory to everyone else. Well, I'm sure I don't need to tell you what will happen to you in the future.

Robertson then indicated by words and gesture that anyone who did not wish to go to work might leave. The record does not establish however, that any employee did. At this point therefore, after giving the Johnson invitees a thorough scrutiny, Hughes said, "Very well, we will assume everyone here feels as you do" and embarked upon the body of his remarks. He disclaimed any intention to "knock" the Union, declaring that it had done the people of the Willamette Valley a great deal of good. He expressed the conviction that the Giustina brothers felt the same way, and that the Respondent did not wish to "break" the Union. Hughes went on to point out, however, that the Union leaders had a "tremendous responsibility" to the members of the organization, by virtue of the power inherent in their position, to "dictate the lives" of several thousand men, and that they ought to be conscious of their responsibilities in that regard. In this connection, according to the stipulation, Hughes described the current strike as an "entirely uncalled for" action. He referred to the cost of the strike to the employees involved, and pointed out that all of the strike settlements negotiated with particular employers since its inception had been for a lesser sum than the Union's original wage demand.

After a reference to the fact that the Respondent's management, allegedly, could have lowered the wages of its employees by five cents, and then settled on the basis of a fictitious five cent raise, Hughes went on to say that the Respondent would take no such course. In this connection, I find, he declared that:

We are going to be honest with you. We are not going to make an offer, and we are not going to try to make you think you are getting something when you are actually getting nothing. That is not the way we operate. We are going to lay the cards flat on the table.

The labor relations director went on to explain that the market for the Respondent's product was poor, and that prices were low. Referring to the fact that the Respondent's "gypo" competition could operate profitably under the market conditions then current, starting and stopping operations in the light of the market situation, Hughes declared that the Respondent, too, could see its way "clear" to increase wages if it did business in the same fashion. He advised the employees, however, that the Respondent thought it more important to be able to keep a good crew by paying a "fair" wage and providing "steady" work.

At this point, I find, Hughes declared that management representatives in the Willamette Valley, in general, had done an "awfully poor job" of keeping workers informed as to their individual rights and their liberty to do as they wished. In this connection, also, he went on as follows:

Remember, as I've told most of you while you were on picket duty, generally a man has a right to strike or not to strike as he sees fit, to engage in concerted activities such as a strike or refrain from them, and neither the Union nor the employer can discriminate against the man for his actions. The Taft-Hartley Act is your protection and provides this and is still the law of the land. In the first place, the Union cannot keep you from working if you want to.

At this point, according to the stipulation, President Giustina interrupted to remind the men of their "individual rights" under the Constitution; he declared that:

It is the rights of the individual that we think is important. Your rights as a man to work where and when you want to. No union can make you go out to strike. On the other hand every man also has the right to strike if he wants to. Any individual working in the mill can go on strike and we can't do one thing about it. He can tell us to go climb a tree. But if he didn't want to strike, nobody can make him. He has a right as an individual to keep on working.

One of the employees raised a question as to the Union's strike vote—to which Hughes replied that he did not have much "respect" for the vote, since it had only carried by a small majority and since no more than 20 per cent of the Respondent's plant

employees had voted for strike action. He went on to explain these observations, I find, with a detailed reference to the strike vote figures. After pointing out that only 82 of the Respondent's 250 eligible employees had voted, Hughes applied the overall percentages revealed by the poll results and deduced that approximately 52 of the Respondent's employees must have voted for the strike while 30 voted in opposition; he concluded that those who had voted for the strike represented only 20 per cent of the Respondent's crew, and declared himself unwilling to believe that the wishes of this percentage of the crew represented the "wishes and desires" of the entire group.

With a disclaimer of any "hard feelings" on the part of the Respondent, however, and a declaration of personal respect for Business Representative Howden, Hughes then concluded his formal remarks.

At this point in the discussion Orville Bloom, one of the Johnson invitees, raised a question as to what would happen to the returnees when the strike ended; specifically, I find, he asked what would happen if any Union men rehired upon the termination of the strike refused to work with men who had returned to work earlier. Natale Giustina reassured him, in effect, that the Respondent would be "tough" in resisting such a development. An unidentified employee then observed, however, that if the men present went back to work they would be "through" with the Union. Hughes, in reply, declared:

No, you're not. . . . Now all you have to do to it walk up to one of the committee and offer your money to him. If he doesn't take it, the union can't kick you off the job.

Bloom then asked about the pay the returnees would receive. He was advised by President Giustina that the Respondent intended to maintain the wages, hours, and working conditions in effect at the start of the strike. Giustina added, however, that the Respondent would like to pay its employees on the basis of their ability, but that the status of the Union as the representative of the employees precluded it from doing so. Bloom then asked if the men would continue to enjoy the other rights and advantages they had gained through the Union, if they returned to work. President Giustina, prompted by a reference to the Respondent's veneer plant, responded as follows:

Look at the veneer. All right, they've got everything you've got, except seniority, and they don't want that. The best man gets the job and they're happier that way. Seniority is out.

The stipulation previously noted for the record, which attributes these remarks to Natale Giustina, gives no reliable indication as to whether his last observation was intended to be descriptive of the situation in the veneer plant, or a forecast of change with respect to the Respondent's sawmill seniority policy in the event of a resumption of operations. And since the record as a whole affords no alternative basis for a choice of one interpreta-

tion in preference to the other, any invidious inference as to the significance of Giustina's remark would seem to be unwarranted.

At this point, however, an unidentified employee asked why the District Council did not wish the men to return to work. Hughes undertook to reply; he advised the men that the members of the District Council were not thinking about them but about the organization's income of \$4 per month from each man, or about \$900 per month from the Respondent's employees. Specifically, I find, he declared:

That's right. All they're worried about is their nine hundred dollars a month. That's what they take out of this plant. They're just thinking about their jobs.

An unidentified employee, according to the stipulation, then raised the rhetorical question, "If they can think about their jobs, why can't we think about our jobs." And Natale Giustina, I find, declared, "That's it. That's the whole thing right there." A further question was raised as to whether the employees present could withdraw from the District Council or, better still, form a "new union" of their own. At this point, however, Hughes interrupted to advise the employees that:

Now, just a minute. Pardon me, Nat, let me say a few words just here. This is not the time nor the place to discuss anything like that.

There is testimony, offered in the General Counsel's behalf, that Hughes then declared, in words or sub-

stance, that, "I think it would be better to just use our individual rights and go back to work like we've planned." Hughes and President Giustina however, with support from the firm's production manager, vigorously denied any such remark. Dean Sparks—the employee responsible for the notes upon which the stipulation herein previously quoted, at length, is based—did more than testify that Hughes had made the quoted remark in substance; he insisted, as a witness, that Hughes had spoken in the first person plural. In the entire context of the case, however, and upon my observations with respect to the demeanor of the Respondent's labor relations director, I find this testimony incredible, and the denials of Hughes and the Giustina brothers more worthy of acceptance. It is so found.

An unidentified employee, I find, then requested that the men get "this thing" started. He did not identify his reference. Hughes, however, suggested that he and the Giustina brothers would withdraw from the shop, and they did so. Robertson then requested a show of hands on the part of those present who wished to return to work. The stipulation suggests, and I find, that a majority of those present indicated a desire to participate in the "back-to-work" movement. At this point, therefore, an unidentified employee raised a question as to whether the group wished to return to work in the morning, or at the outset of the following week. A show of hands was again requested, and Robertson then announced that the men would go to work

the next morning. A division was demanded, however, and Robertson asked all of those who wished to return to work in the morning to step to one side. The results of the division, apparently, confirmed the decision previously indicated; Robertson announced that the men would go to work in the morning, and suggested that they see the management. Hughes and the Giustina brothers were asked to return to the shop, and Robertson reported that most of the men wanted to come back to work in the morning, if the Respondent would let them. President Giustina, I find, observed that there was plenty of work, and that the management would see the men in the morning, when the whistle blew.

(The stipulation previously noted, upon which most of my conclusions have been based, indicates that Robertson's efforts to promote a decision with respect to a possible resumption of work by the employees was accompanied by an attempt to characterize the four Johnson invitees, previously noted, as men who had come to the shop to start trouble. Wright and Bloom, however, protested that they had come in quest of information, and that they had not understood themselves to be under any obligation to accept the idea of an immediate return to work, when they came. Robertson, I find, told them, in substance, to leave the shop if they did not like the idea of a return to work. Upon Wright's further protest, however, he apparently abandoned his attempt to force their departure, and the record shows that he proceeded with the vote already described. When an unidentified em-

ployee suggested, nevertheless, that the men ought to wait until Monday, before returning, Robertson declared that the men who were not ready to go to work immediately might as well leave the assembly. At this point, I find, Wright again pointed out that some of the men might need additional time to consider the matter, and Robertson finally called for the show of hands previously noted, on the issue of an immediate return as opposed to a return at the outset of the following week. Although the cold record, in this connection, provides no clear-cut evidence as to Robertson's attitude, and the manner in which those polls were conducted, the tenor of the stipulation as a whole would certainly seem to warrant an inference that Robertson, personally, favored a return to work at the earliest possible moment, and that his conduct as the unofficial leader of the discussion effectively projected his views in this connection. It is so found.)

While the assembly was in the process of dispersal, the Respondent's management representatives were accosted, outside of the shop, by the Johnson invitees; they were advised that no one had come to the meeting with a desire to cause "trouble" and they informed the invitees, in return, that they felt it had been a good thing to "lay" their "cards" on the table, and that they held no "hard feelings" against anyone as a result of the night's development.

On July 30, 1954, apparently as a result of the assembly noted, the initial charge in the present

case was prepared and submitted to this agency. It was docketed, I find, on the 2nd of August; a copy of the unfair labor practice allegations was mailed to the Respondent on the 5th and received on the 6th of that month.

H. The Resumption of Operations.

In the meantime, as of the 29th of July, a sufficient number of strikers had reported for work to enable the Respondent to resume partial operations. On August 5, 1954, therefore, the Respondent sent a letter to all of the employees who had gone on strike and not returned. In it, the firm's employees—among them, the second shift workers—were advised that:

Operations at our plant in Eugene were resumed July 29, 1954. Some of you have not returned to work. We plan to continue our Eugene operations. If you have not returned to work by Monday, August 9, 1954, to start the regular day shift, it will be considered that you have severed your employment and we will look to others to fill the jobs.

Subsequently, additional employees who had been on strike returned to work at the Respondent's plant; with a certain number of new employees, these returned strikers enabled the Respondent to establish and maintain its Eugene operations at a substantially "normal" level—on one shift.

(On the 8th of August, at a meeting of the Respondent's crew, those present voted 71-12, to return to work only as a "group" under the sponsorship of their union. The picket line was continued.)

On the 25th of August, also, a petition for the decertification of the Union at the Respondent's plant was docketed at the Board's Sub-Regional Office in Portland, Oregon; it had been prepared and filed, I find, by one of the Respondent's workers, Glenn L. Winey, and a group of associated employees. The Respondent, I find, received a copy on the 27th of August. The petition called for the decertification of the Union as the bargaining agent of the production and shipping employees of the Respondent's sawmill operation at Eugene, Oregon, exclusive of guards, clerical and supervisory employees. It cited April 1, 1955, however, as the expiration date of the Union's then current contract with the respondent employer.

A copy of the petition was mailed to the Respondent. Subsequent to August 26, 1954, on a date not set forth in the record, it was received and read by the firm's labor relations director.

I. Attempts to Settle the Strike.

The previously noted "industry-wide" strike in the lumber trade was still current. On August 26, 1954, in consultation with the Governors of Oregon and Washington, representatives of the industry and the interested unions agreed upon a procedure calculated to eventuate in a strike settlement.

(For approximately two weeks prior to the announcement of this agreement it was common knowledge, known to the Respondent, that the Governors of the two states affected were involved in an effort to find a formula which would end the strike. The fact that an agreement on a formula

had been reached was published on August 27, 1954; it came to the Respondent's attention, I find, on that date.)

In substance, the parties agreed, consistently with their negotiating authority, to take certain action themselves and to recommend certain action to their principals. Among other things, I find, they agreed upon the appointment of a Fact Finding Board to investigate the "industry" issues involved in the strike and to report its findings to both parties. Pending the board's report, they agreed to recommend that all crews be returned to work as soon as practical, and that the parties refrain from discrimination against any employee, employer, or union member for conduct since the inception of the strike. The parties to the agreement also agreed to require a report by the board within 90 days, unless they granted it an extension; the agreement also required the board to release a public statement as to its findings of fact:

* * * in the event that any of the parties fail to accept and act in accordance with any findings or recommendations of the board or panel.

The signatory parties also agreed to recommend that any wage increase, which might result from the fact finding procedure agreed upon, be paid retroactively from the date on which the employees resumed work. The agreement, insofar as it affected the Union and the Respondent, concluded with an endorsement, as follows:

The Representatives of the Lumber Operators and the Lumber and Sawmill Workers, American Federation of Labor, recommend that the above stipulation be endorsed by the individual employer and the Union.

On August 31, 1954, Business Agent Howden and other Union representatives presented a copy of the Governors' Proposal to the Respondent's management as the basis for a strike settlement. Hughes asked if it was the Union's desire to "negotiate" on the basis of the proposal. Answered in the affirmative, he characterized the proposal as inapplicable with respect to the Respondent's employees, and went on to explain:

In order to bring any of you fellows up to date, I would like to tell you that under date of August 26, 1954, this company received notification from the NLRB that a petition for decertification of Local 2611 as the collective bargaining agent for the employees in the plant had been filed. * * * Inasmuch as your position as bargaining agent has been questioned by the employees working in this plant and we have been officially notified of this by the NLRB, until that question is resolved we do not feel it is proper to negotiate with you.

Hughes was asked if the Respondent would negotiate with the Union if there were no question as to its status as the exclusive bargaining agent of the firm's employees, and replied in the affirmative. On this note the meeting ended.

On September 2, 1954, however, the Union received a letter, signed by President Giustina of the Respondent, which read as follows:

You are notified that the Collective Bargaining Agreement between Local Union 2611, Lumber and Sawmill Workers and this company is terminated.

In reply, on September 13, 1954, Business Agent Howden dispatched a letter to the Respondent calling its attention to the fact that its trade agreement with the Union could only be terminated in accordance with the provisions of Article XIII, previously noted, and that the agreement therefore was still in effect. On September 16, 1954, the Union also filed its first amended charge in the present case, alleging 8 (a) (1) and (5) unfair labor practices on the basis of the Respondent's entire course of conduct prior to that date.

The Union's regular monthly meeting, held on the 14th, had not led to any formal action, on the basis of the Respondent's earlier conduct, by the membership. At a special meeting about two weeks later, however, the Union members voted to accept the Governors' Proposal as the basis of any settlement with the Respondent on the wage issue. No announcement, however, was sent to the firm.

In due course, on December 6, 1954, the Regional Director of the Board notified Glenn L. Winey and his associates that the decertification petition they had filed would be dismissed:

* * * inasmuch as the collective bargaining agreement currently between the company and Local 2611 of the Lumber and Sawmill Workers, AFL constitutes a bar to investigation of representatives at this time * * *

Copies of the letter were dispatched to the Respondent, the Union, and their respective attorneys, among others. The petitioners were advised, by the Regional Director, of their right to obtain a review of his dismissal action by the presentation of a request for such review to the Board, and the service of a copy of any such request upon the other parties, within ten days after the receipt of the above-indicated dismissal notice. The record establishes that such a request was filed.

On December 22, 1954, the Governors' Lumber Fact Finding Board issued its report with respect to the issues in the Pacific Northwest Douglas Fir Lumber Industry strike. It referred to the history of the dispute between the AFL and CIO unions and the various employers involved, the scope of the union demands, and its recommendations with respect to the wage adjustment and related issues. Substantively, it found that a "moderate increase" in basic wage rates with respect to all classifications would be appropriate, and recommended that an increase of 7½¢ per hour should be granted by the employers involved, effective from January 1, 1955, to April 1, 1956; in consideration of the proposed increase, it recommended that all of the other issues involved in the strike be considered resolved.

J. Renewed Negotiations.

On January 4, 1955, the Respondent, over the signature of Sam Hughes, addressed a letter to the Union suggesting that negotiations be resumed, in view of certain "new matters" which had developed since their August conference. The Union was invited to set a meeting date; it was advised, however, that:

Neither this letter nor any meeting shall be construed to have any effect upon the representation proceedings filed by Mr. Winey and Associates.

Pursuant to the Respondent's request, a conference was held at the plant on January 8, 1955; Sam Hughes and the Giustina brothers attended for the Respondent, while Business Agent Howden and District Council Secretary Kraal represented the Union. No representatives of the Willamette Valley Lumber Operators Association were present in a representative capacity.

(A transcript of the conference discussion has been made a part of the record. No testimony calculated to supplement or modify it was offered. My findings with respect to the conference, therefore, may be taken as bottomed upon undisputed evidence.)

Kraal, I find, opened the discussion with an inquiry as to the nature of the matters the Respondent wished to discuss. Hughes, in reply, declared that:

The meeting, as I say, is held at the request of the company. And we wish to make clear, the hold-

ing of this meeting is not a waiver on the part of the company of any question of representation that has been raised by any employee in this company, or group of employees by means of a decertification petition, or any other matter brought before the NLRB. The company wishes you to be informed that the new developments we make reference to, are first of all the 7½ cent an hour pay increase which is being effectuated in a portion at least of the industry, and has been placed in effect in most other employer's operations that we have knowledge of. Secondly, as you may, or may not, know a recent decision of the National Labor Relations Board has reversed a prior holding and well-established rule of the Board to the effect that if there was a representation matter raised, a question raised concerning the status of an incumbent union, it was an unfair labor act for the company, the employer, to negotiate with the incumbent union. That is the other new development that I wish to make clear, and have the record show, and reference is made to that new development as the purpose of this meeting.

(The decision cited by Hughes, I find, involved the William D. Gibson Co., Division of Associated Spring Corporation, 110 NLRB No. 88, 35 LRRM 1092, in which this agency held that its well-established Midwest Piping doctrine would not be applied in situations where an employer, despite the pendency of a representation petition, contracted with a labor organization with status as an incumbent union actively representing its employees.)

Hughes went on to declare the Respondent's willingness to make a 7½ cent per hour wage increase effective for all of its plant employees, except those excluded from the bargaining unit under the statute, as of January 1, 1955, and asked if the Union had any objection. Howden, for the Union, countered with a tentative observation that any such increase ought to be committed to writing and signed, prior to its effectuation at the plant. Kraal, as the District Council's representative, pointed out however that it had been authorized to negotiate the wage issue on behalf of the local unions within its jurisdiction, and that it had several subjects which it would have to "get out of the way" before any settlement of the wage issue could be discussed. He pointed out, I find, that the Respondent had not been a party to any antecedent agreement to effectuate the recommendations of the Governor's panel. Hughes, however, declared the Respondent's readiness to effectuate a wage increase of 7½ cents per hour because it appeared to represent an established industry pattern, and in order to maintain the Respondent's competitive position with respect to other employers in the labor market. He agreed that the Respondent's action would not be based upon any prior commitment to adopt the recommendations of the Governor's Panel as a settlement formula. In reply, I find, Kraal went on as follows:

Well, I will make my position clear. I am not here to tell you you can, or you can't place it in effect. That is the company's business. You can do what you please about it, but it is

neither here nor there with the District Council until certain other questions have been taken care of satisfactorily. We are not here to discuss 7½ cents wage increase or anything else until other things are cleared up. We are not here to tell you that you can't do it.

When Hughes then pointed out that the Respondent had no trade agreement with the Council, and that its questions with respect to the effectuation of the wage increase had been addressed to the Union representative, Kraal identified himself as a District Council official "called" by the Union, and speaking in its behalf. As such, he reiterated his earlier statement, saying:

I said you just go ahead and run your own business as far as your wage structure is concerned here until you take care of such other matters between the union and the company, then we will be prepared to talk, as to wages. At the present time, we are not prepared to talk.

Upon the settlement of the "other matters" in dispute between the parties, Kraal indicated, the Union would be ready to discuss the applicability of the recommendations of the Governor's Panel, as noted.

When the discussion turned to the "matters" thus noted, Kraal referred, I find, to the fact that the strike at the Respondent's plant was still current; he referred, also, to the Respondent's antecedent refusal to negotiate as a cause of the strike, and

declared that it had committed unfair labor practices. These were characterized as the source of the "unsettled" questions. In response to a direct inquiry by Hughes, Kraal again refused to discuss the company's proposal with respect to a 7½ cent per hour wage increase, but declared that the Union would be happy to discuss it after the disposition of the other "disputed matters" noted. Howden, in effect, confirmed Kraal's statement with respect to the Union's position.

(At this point a digression appears to have entered the discussion. Hughes, I find, taxed the Union representatives with the fact that none of its Plant Committee members were present; he raised a question as to whether the failure of the Plant Committee to appear might be due to the fact that there were no persons eligible for committee membership and, alternatively, whether the absence of any committee representatives could be said to constitute an acknowledgment that no trade agreement was in effect. Each of these observations, however, was categorically denied.)

Upon Howden's observation that the Union had not had an opportunity to take an official position in regard to the acceptability of the recommendations made by the Governor's Panel with respect to a wage increase, he was asked to state his own position; he indicated, I find, that he would probably recommend acceptance of the recommendation, insofar as the Respondent and all other employers were concerned, if "certain other matters" could be

understood. When asked to be specific, Howden called for an admission by Hughes that the trade agreement between the parties was still in effect; Hughes however refused to make any such admission, and reiterated the Respondent's contention to the contrary. Howden then declared, I find, that it would do the Respondent "no good" to attempt an agreement on the wage issue in the absence of a contract. Hughes, according to the conference transcript, pointed out that the Union was still the collective bargaining agent of the employees—according to its own contentions—and that it would legally hold that status, without a contract. Howden, in reply, declared that:

* * * we will state that the contract is still in force, and we will have to stand with that opinion, that it is still in force, before any wage settlement.

In effect the Respondent was advised that the Union would take no position with respect to the proposed wage increase, in the absence of an acknowledgment by the firm that its trade agreement with the Union was still in effect.

At this point, I find, District Council Secretary Kraal asked why the Respondent had called upon the Union to confer with respect to the effectuation, of its proposed wage increase, instead of effectuating such an increase unilaterally, in view of its contention that it had no Union agreement. Hughes replied as follows:

* * * Your status as the collective bargaining

agent has been challenged. There is a question of representation which has been raised by a considerable number of employees of Giustina Brothers Lumber Company. * * * During the latter part of October or November, at least the latter part of 1954, the National Labor Relations Board has reversed its earlier policy of allowing a company, or employer to continue negotiating with an incumbent union. It is no longer an unfair labor act for an employer to negotiate with an incumbent union when a question of representation has been raised, either by employees, or another union. Bearing those things in mind, we addressed a letter to you, because of the recent wage increases that have been effected in the industry. * * * And it is our opinion that we would no longer be guilty of a possible unfair labor act by negotiating with you when your status has been challenged, as has been done in this case. This is why we desire to negotiate with you.

The Respondent, through its labor relations director, then declared its willingness to negotiate a new agreement if the Union so desired. There was no indication of any such desire. Kraal, however, reiterated the Union's position that it would be "incorrect" to discuss the matter of the wage increase currently; he denied that this position constituted a refusal to bargain with respect to the wage issue, and insisted that the other matters in issue between the parties—specifically, certain al-

leged unfair labor practices allegedly attributable to the respondent employer—would have to be settled satisfactorily first. At this point, accordingly, he was asked if there was “anything else” that he cared to discuss; the executive secretary replied, however, that he had nothing to discuss at the time, and was in attendance at the Respondent’s request. Nevertheless, I find, he declared his readiness to discuss “anything” at issue between the parties if a “reasonable settlement” could be reached. President Giustina and the Respondent’s labor relations director then characterized the Union’s position with respect to the proposed wage increase as a “refusal to negotiate” in regard to the issue. Their characterization was disputed by Kraal, who insisted that:

We just refused to take it up in the order that the company wishes it taken up in. We will take it up in a little different order. * * * And we will get the whole thing settled up.

When asked to define his concept of an appropriate agenda, Kraal insisted that the parties would have to discuss “the things that happened first” at the outset. Specifically, I find, he referred to the Respondent’s alleged unfair labor practices, and Howden cited the presence of the Union’s picket line, and the continued status of the strikers as company employees.

With respect to the latter issue, Hughes insisted, for the respondent employer, that all of the men still on strike had been replaced, and that they

were no longer employees. Howden, in reply, observed that there would be no useful purpose served by a continuation of the discussion if the Respondent's position in this connection was fixed. Kraal insisted however, in the Union's behalf, that the organization had no desire to await a determination with respect to its unfair labor practice charges by this agency, as a prerequisite to negotiations in regard to the wage increase; he declared, instead, that the Union was entirely ready to negotiate an amicable settlement with respect to all of the issues involved in the pending charges, and that it would then be willing to "come around" to the wage issue. He went on to reiterate:

* * * it just so happens that we have some other disputes between us here besides wages, and that is what I have been trying to say
* * * that we have got a little bigger job to do here than just to settle the wages now. And if we go at it in the way that I think we should, we will settle it in its order. We will settle those things that must be settled first and then we come up to the wages, and when that is settled, as far as I know, that is all the dispute that there is between us and the company.

Hughes assured the District Council representative that an agreement with respect to the effectuation of the wage increase would not be construed by the Respondent as a waiver by the Union of its rights or remedies under the National Labor Relations Act with respect to the unfair labor practice

charges. Kraal indicated that the Union's view was contrary, declaring that:

I would certainly consider it quite a waiver of several other questions, if we sit down here with you this morning and tell you, you go ahead and pay your scabs 7½ cents. We are just not negotiating for that kind of people you see.

Howden, at this point, returned to the Respondent's contention that the strikers had been replaced and were no longer company employees. He asked, in this connection, if it would be correct to assume that removal of the Union's picket line would not, in and of itself, lead to their reinstatement. And Hughes, in reply, declared that:

If you mean, Mr. Howden, if Local 2611 would remove the picket line and the men who were on picket duty would be brought back to the company and replace those men who are now working here, we are not willing to do any such thing at all * * * this company is not willing to discharge those replacements who are actively employed here at this time, in order that those persons who are on strike may return and once again become employees of this company. As far as future employment is concerned, obviously, at any time that a man desires to apply for work at this plant, he has a right to do so. If there is a job open at that time, we would certainly give anyone full consideration for that job.

At this point, Kraal, after a reiteration of his unwillingness to indicate acquiescence in the Respondent's wage increase proposal, invited its labor relations director to submit the proposal, in written form. Hughes gave no definite indication of the Respondent's intention, but suggested that the conference be recessed pending any "new propositions or proposals" to be advanced by either party. On this note the meeting ended.

On January 13, 1955, Labor Relations Director Hughes again dispatched a letter to the Union. He referred to the Respondent's earlier letter of September 2, 1954, and Howden's reply previously noted, and declared that:

In order that there may be no doubt, you are hereby notified that we re-affirm our notice of termination of that agreement.

The Union's reply, over Howden's signature, re-affirmed its position as stated on September 13, 1954, to the effect that the collective bargaining agreement between the Respondent and the Union could be terminated only in accordance with the provisions of Article XIII, and that it was, therefore, still in effect.

K. The Termination of the Strike.

On January 19, 1955, pursuant to formal action previously taken at a special meeting, the Union terminated its strike against the Respondent and withdrew its picket line. As of the same date, its representative delivered a letter to the Respondent, prepared on the basis of the Union's vote, which read as follows:

This is to notify you that Lumber and Sawmill Workers Local Union 2611 has taken action to terminate the strike of employees at your plant, and that the strike and picketing in connection therewith have been terminated. The union hereby unconditionally requests the immediate reinstatement of the employees who have been on strike.

This action on the part of the Union was followed by two additional letters to the company. The first of these—dated on January 21, 1955, and signed by 14 employees—contained a reference to the termination of the strike and an unconditional request for reinstatement, as of the letter's date. On the following day a letter of similar import was signed by 27 strikers and dispatched to the respondent employer. The Respondent's reply, prepared by Hughes and dated as of the 22d of January, was addressed to the Union and marked for Howden's attention; it acknowledged receipt of the Union's letter of January 19, 1955, with respect to the reinstatement of the strikers, and reported the absence of any "vacancies" at the Respondent's plant.

On January 25, 1955, the Respondent sent identical letters to the Federal Mediation and Conciliation Service and the Oregon State Board of Conciliation to report that it had given notice of termination of its contract with the Union and that no new agreement had been reached.

On the 26th of the month the Union's second amended charge in the instant case, characterizing

the Respondent's refusal to reinstate any strikers as an unfair labor practice, was filed.

L. Subsequent Developments.

On March 8, 1955, the parties were advised by the Board that a Request for Review with respect to the Regional Director's dismissal action in regard to the decertification petition had been rejected, and that the dismissal had been sustained:

* * * on the ground that the Board, in conformity with its well-established practice, will not entertain a petition for representation while there is pending in Case No. 36-CA-633 a complaint alleging violations of Section 8 (a) (1) and (5) of the Act.

Insofar as the record shows, there have been no further contacts between the Respondent and the Union, except those incidental to the instant case.

Conclusions

A. The Issues

Essentially, it is the General Counsel's contention that the conduct attributable to the Respondent between the 28th of July and September 2, 1954, involved interference, restraint and coercion, directed against employees engaged in the exercise of rights statutorily guaranteed; with respect to certain aspects of the conduct involved, it is further alleged that the Respondent evidenced its failure or refusal to bargain in good faith with the Union as the exclusive representative of its employees in a unit appropriate for such purposes. Additionally,

it is contended that the Respondent's course of conduct converted the Union's economic strike into an unfair labor practice strike, which was thereafter extended and prolonged by virtue of the conduct in question, until its termination by the Union in January of the following year. The Respondent, it is alleged, then refused to reinstate strikers who presented unconditional requests for reinstatement, upon the termination of the strike, to their former or substantially equivalent employment. In the light of his antecedent contentions, finally the General Counsel argues in this connection that the Respondent's failure to take such action involved discrimination with respect to the employment tenure of the strikers, discouraged Union membership and concerted activity, and thus involved an unfair labor practice.

The Respondent, in substance, contends that its course of conduct between the indicated dates involved no unfair labor practice, and that the economic strike action originally taken by the Union, therefore, was never converted into an unfair labor practice strike. In the light of these contentions, it is further argued that the Respondent, under applicable decisional doctrine, retained its right to replace the strikers permanently and resume operations; that it did, in fact, follow such a course; and that no charge of discrimination calculated to discourage Union membership or concerted activity can properly be maintained against it on the basis of its January refusal to rehire the strikers, in the absence of vacancies as of that date. To a con-

sideration of the issues posed by these contentions, this report now turns.

B. The Strike

Did the participation of the Respondent's management, and its labor relations director, in the discussion at the meeting which preceded the back-to-work movement, under all the circumstances, involve an unfair labor practice? Upon the entire record, I am convinced that this question must be answered in the affirmative. Several aspects of the situation, as revealed in the available evidence, when "incisively analyzed" in their total context, have impelled me to this conclusion.

In the light of the entire record, it is true, there would seem to be no justification for a conclusion that the Respondent instigated the back-to-work movement among its employees, or that any of its management representatives sponsored or promoted the assembly which preceded its resumption of plant operations. The available evidence, however, would certainly seem to warrant an inference that the Respondent's representatives possessed advance knowledge as to Robertson's plan in that connection, and that they welcomed his activity.

(The contention of Respondent's counsel that the firm's management representatives were invited to the assembly, initially, after it had started, must be rejected as contrary to the record.)

In this regard it may be noted, for example, that Johnson, immediately after the adjournment of the

Union meeting on July 28, 1954, was able to invite four Union members to a meeting in the Respondent's "shop" and that the shop at the Respondent's plant was, in fact, open when the invitees arrived. Some of the benches in it, I find, had been arranged to accommodate an audience.

(The evidence establishes that interested employees assembled at the shop between 9:30 and 10:15 p.m. on the evening of the 28th. The record is clear, however, that the Respondent, then, had no second shift in operation. In the absence of a logical alternative explanation, I find it difficult to believe that the "shop" could have been opened at that hour, or that it would have been left open, without the knowledge and acquiescence of managerial representatives.)

Despite the Respondent's contrary contention, I find that its acquiescence in the use of the shop by the employees, under these circumstances, represented a departure from previous practice. It was stipulated, for the record, that the shop had been used for employee meetings in the past. Very few have been cited, however. And I am satisfied that these meetings, in the main, were held under the Respondent's auspices, for business reasons, and that any other employee assemblies in the "shop," to raise funds for needy workers, were held on the basis of permission previously secured. Since the assembly now under consideration would obviously have been considered unique, the failure of the evidence to reveal a request on the part of Robertson

for permission to use the "shop," or any permissive grant on the part of the Respondent's representatives, might itself suggest, at least, the consciousness of those involved that overt participation by the Respondent in the preliminary arrangements required might compromise the firm and endanger the success of any back-to-work movement. And finally, I find it worthy of note that the initial remarks of Hughes, at the assembly, reveal his antecedent awareness of the fact that attendance had, supposedly, been limited to those "invited" expressly. Such admitted knowledge on his part would clearly be incompatible with any current claim of surprise.

(Hughes, himself, in testifying as to the telephone call by which he learned of the assembly, admitted that Robertson had said nothing as to the subject about which the men wished to speak to him, and that he had merely garnered an impression that they wished to discuss a "controversial" matter, the duration of the strike. Whatever he knew about the organization and objectives of the gathering, therefore, could only have been acquired earlier.)

Upon the entire record therefore I am satisfied, and find, that the Respondent's managerial representatives possessed advance knowledge with respect to the likelihood of an employee assembly to be held at Robertson's instigation; that they were aware of the projected assembly's purpose or possessed sufficient information with respect to

Robertson's intent to warrant a belief as to his purpose; and that they acquiesced in the use of the "shop" at the Eugene plant for the meeting in the light of their knowledge as indicated.

The testimony of the labor relations director, taken at face value, would indicate that he had been invited to the assembly to "answer questions" for the employees. It is clear, however, that his actual role proved to be more than passive. Robertson and his non-supervisory employee associates may have been the instigators of the assembly, and the back-to-work movement, but it was Hughes, beyond and doubt, who "carried the ball" with respect to the latter objective, at least at the outset of the discussion. Upon the entire record, I am entirely satisfied that the Respondent, through its labor relations director, participated actively in the promotion of the back-to-work movement at the assembly. Among the aspects of the situation which have led me to this conclusion, the following may be noted:

(1) The inquiry attributed to Hughes at the outset, as to whether everyone invited was present, and his further inquiry as to whether Sparks, Bloom, Zybach, and Wright had been invited, bespeaks a concern with respect to the success of the assembly, and the achievement of its objectives, incompatible with any claim of disinterested participation.

(2) Despite Robertson's failure to state the purpose of the meeting openly, Hughes undertook to characterize it as an occasion for the presentation

of individual grievances, and raised a question with respect to Howden's knowledge of the assembly and his opportunity to be present. Upon the entire record, I am satisfied that his comment represented an effort to fix the course of the discussion in a fashion compatible with Section 9 (a) of the statute. Such an effort, again, bespeaks the existence of certain preconceptions with respect to the purpose of the meeting, and a degree of participation incompatible with any claim of passivity.

(3) After inviting comments—not questions—in deference to an antecedent suggestion by Robertson, Hughes took command of the meeting, and, as previously noted, embarked upon extensive remarks. At the very outset, also, he saw fit to comment about his hope that none of the men intended to “rat” upon their fellow employees, by reporting the tenor of the discussion to Union and District Council representatives. Although expressive of a “hope” that none of those present would render themselves persona non grata with fellow employees, his language clearly conveyed a threat that anyone who reported back to the “hotshots” would run the risk of such a reaction on the part of employees sympathetic to the meeting's objective, and that the Respondent wished possible dissidents to leave rather than incur such a risk. At the very least, these comments of Hughes indicate solicitude, attributable to the Respondent, with respect to the sensibilities of the sympathetic employees present. Such solicitude or concern on the part of an employer, when related to matters outside the field of his

legitimate interest surely warrants characterization as incongruous at least. "What's Hecuba to him or he to Hecuba?" See *Foreman & Clark, Inc., v. N. L. R. B.*, 215 F. 2d 396, 34 LRRM 2697. Manifestations of this type, in short, when attributable to a management representative, can only be taken as veiled threats—or, at the very least, as an indication of an employer's desire to advance an interest of his own.

(4) After Robertson seconded his suggestion that those not in sympathy with the unexpressed objectives of the meeting ought to leave, Hughes commented, "Very well, we will assume everyone here feels as you do." By this remark, and particularly by his use of the first person plural, Hughes indicated to those aware of the assembly's objective, the Respondent's direct involvement in Robertson's plan with respect to a return to work. The indication may have been subtle, but the evidence already available to the employees in regard to the community of interest between Robertson and Hughes, would certainly seem to have been sufficient to guarantee that it would not be lost. Every consideration of logic and human experience, indeed, would seem to suggest, ineluctably, that those listening to Hughes were fully apprised, at this point at least, of the fact that the Respondent was as much involved in the back-to-work movement as Robertson and his associates.

As the General Counsel has put it, the assembly was not accidental; all of the circumstances compel the inference that it had been prearranged by in-

interested employees and the Respondent's representatives. Even assuming, for the sake of argument, that the Respondent had not initiated it, there can be no doubt that it was dominated, in the final analysis, by Hughes and the Giustina brothers. I so find.

In substance, the Respondent's labor relations director advised employees that the strike then current was "entirely uncalled for" and costly to the workers involved. Hughes defended the Respondent's wage policy in relation to its market situation, and insisted upon the Respondent's intention to pay a "fair" wage and provide "steady" work. He reiterated advice previously given the strikers with respect to their individual rights of action, and their liberty to do as they wished with respect to work regardless of the strike situation; specifically, I find, he deprecated the significance of the Union's strike vote and, in effect, invited his listeners to dismiss it as unrepresentative, insofar as the Respondent's crew was concerned.

Upon inquiry, President Giustina stated the terms upon which work would be offered at the Respondent's plant in the event of a resumption of operations, indicated his desire to pay employees on the basis of their ability, and suggested that the men might be "happier" under an arrangement calling for the assignment of work on the basis of individual ability rather than seniority. In addition, I find, the men were advised that the Respondent would resist any refusal on the part of returned strikers to work with those returning while the

strike was current; they were told, in words or substance, that the regular tender of their Union dues would effectively insulate them, under the law, against any attempt on the part of the Union to have them “kicked off” the job.

These indications with respect to the Respondent’s employment policy were coupled with an attempt to belittle the motives of the District Council, with respect to the strike, as selfish—and with a suggestion that the employees would be well advised to “think about” their own jobs, at the Respondent’s plant, with equal self-absorption.

The remarks of Hughes and President Giustina, in their totality, then, amounted to something more than a tactical maneuver or the mere provision of information with respect to the status of the Union negotiations. Implicit in the entire situation, instead, was a direct appeal to the employees for the abandonment of their participation in strike action and concerted activity. Under comparable circumstances—see *The Stanley Works*, 108 NLRB 734, 735-736—the Board declared that:

While an employer may, without violating the Act, inform the employees of the status of its negotiations with a union, or even urge the employees to persuade union leadership to accept its last offer, an employer may not bypass the exclusive bargaining representative by dealing directly with the employees on bargainable subject matters. In this case, the Respondent appealed directly to the employees themselves

to accept the final offer, which the Union's membership had already rejected. * * * We believe that such conduct by the Respondent is tantamount to dealing directly with the employees on the issue of wages, in derogation of the exclusive status of the duly designated bargaining representative.

The instant case, upon the entire record, would seem to fall within the ambit of these principles. Cf. *The Texas Company*, 93 NLRB 1358, 1360-1362. The Respondent argues that it made no attempt to deal directly with employees; its contention is apparently based upon the stipulation of the parties with respect to the inquiry of Hughes, at the outset, as to Howden's knowledge of the assembly, his announced disclaimer of any intent to disparage or "break" the Union, and his suggestion that the shop assembly on the 28th ought not to be considered an appropriate time or place at which to discuss the formation of a new union. The available evidence establishes, however, that the employees present were reminded of their "individual" right to abandon the strike and return to work; that they were urged, upon several grounds, to "think" about their own welfare; and that, upon direct inquiry, they were informed of the wages, hours, and working conditions which would govern their employment. In their totality, I find, the remarks of Hughes and President Giustina amounted to a direct appeal to the employees to accept the Respondent's final offer—the maintenance of the status quo

with respect to all significant aspects of the employment relationship—which the Union’s designated representatives had rejected. This was tantamount to direct dealing with the employees on the wage issue then in dispute.

(The Respondent argues, in passing, that its conduct in urging and persuading the assembled employees to return on pre-existent terms involved nothing more than the exercise of its right to free speech; there can be no doubt, however, that direct dealing without regard to the representative status of the recognized bargaining agent of the employees involved a “verbal act” subject to statutory proscription.)

I find, therefore, that the course of conduct attributable to the Respondent, at the “shop” assembly, involved a violation of its statutory obligation to deal with the exclusive bargaining agent of its employees, only, and interfered with, restrained, and coerced its employees in the exercise of rights statutorily guaranteed.

The Respondent’s letter of August 5, 1954, to the first and second shift employees who were still on strike, clearly embodied a further suggestion that these employees abandon the Union and the strike. In the light of the situation created by the Respondent’s antecedent encouragement of the back-to-work movement, and its direct exposition of the terms and conditions under which operations would resume, the letter in question necessarily involved something more than a written statement of the

firm's intention to exercise a lawful right under the statute. Cf. *Kansas Milling Company v. N. L. R. B.*, 185 F. 2d 413, 29 LRRM 1082. The Respondent's representatives, as of July 28, had already initiated the course of conduct herein found violative of the Act, as amended—and the causal connection between that course of conduct and the extension of the strike, to be noted in detail elsewhere in this report, would seem to be clear. Under such circumstances, established decisional doctrines would seem to compel the conclusion that the Respondent had lost its right to treat the Union employees as economic strikers, and to notify them that, upon their failure to resume work by a definite date, the firm would exercise its statutory right to replace them. Cf. *Kerrigan Iron Works, Inc.*, 108 NLRB 933, 935-936. And I so find.

In considering a communication closely comparable to that now before us, in language and import—see *United States Cold Storage Corporation*, 96 NLRB 1108 at 1109-1110 — this agency declared that:

Failure to work during the pendency of a strike cannot be construed as a termination of employment. Without notice of severance on the part of the striking employee, a termination can be effectuated in these circumstances only by the Respondent. Hence, conditioning the termination of the strikers upon their failure to act at the Respondent's request, stands as a specious attempt to shift the responsibility

of termination from the Respondent to the striking employees.

When such conduct involves something more than isolated action — and constitutes, instead, an integral part of a developing pattern of opposition to the purposes of the statute, as herein found — it can only be characterized as an unfair labor practice. *L. C. Everist, Inc.*, 103 NLRB 308, 310; *United States Cold Storage Corporation*, *supra*; Cf. *Kerri-gan Iron Works*, *supra*; *N. L. R. B. v. Clearfield Cheese Company*, 213 F. 2d 70, 34 LRRM 2132, 2133, 2135, *enf'g* as modified 106 NLRB 417. I so find.

The Respondent contends that the letter ought not to be construed as tantamount to a notice of discharge. It is argued that it contained no “solicitation” with respect to the abandonment of the strike, that it contained no “threat” of adverse action on the Respondent’s part, and that the strikers were merely put on notice, by its terms, that they would be subject to replacement if they chose not to return. These arguments, however, amount essentially to a play on words; they may be equated with a contention that the employees could not be expected to draw any inference, even one of the most obvious character, from the language which the Respondent chose to employ. If its representatives had not expected the employees to draw such an inference, and to act accordingly, the letter would have been a mere gesture. I cannot accept a contention, in effect, that it was so intended. Employees

in receipt of such a letter, I find, could reasonably be expected to assess its significance in the light of the Respondent's antecedent effort to encourage a back-to-work movement, and to deal directly with prospective returnees. When so considered, its essential significance as solicitation with respect to the abandonment of the strike, coupled with a threat to the employment status of those oblivious to its implicit appeal, would seem to be patent.

(This characterization of the letter as involving a threat, however, need not rest upon inference alone. When asked, at the July 28th meeting, what the Respondent would do if any strikers returned to work after Monday, August 2, 1954, President Giustina replied, I find, that the firm would not dismiss any replacements, hired prior to their return, in order to put them back to work. However "correct" such a policy announcement might have been, as applied to economic strikers under the Kansas Milling decision, it clearly possessed coercive impact in a context of interference, restraint, and coercion, and the Respondent's attempt to bypass the designated representatives of its employees with respect to wage determination.)

Nothing in the Respondent's course of conduct after the dispatch of its August 5th letter can be described as inconsistent with the view that, under its terms, strikers who failed to report by the indicated date would lose their protected employment status and employee rights. As to such employees, it was clearly intended as a final termination notice, and the Respondent's subsequent course of

conduct, to be noted, reinforces the conclusion that it was so treated.

On August 31, 1955, when the Governors' Proposal was presented as a formula on the basis of which the strike might be settled, Hughes refused, categorically, to negotiate with the Union representatives. As noted, the firm's position was grounded in a contention that the Union's status as the exclusive representative of its employees had been "questioned" by certain employees privy to a decertification petition, previously filed. This contention must be rejected as specious. Ostensibly, if its labor relations director may be credited, the Respondent's refusal to negotiate with the Union was bottomed upon the assumed applicability of the Board's Midwest Piping doctrine. That doctrine, as enunciated in *Midwest Piping Supply Company, Inc.*, 63 NLRB 1060, and developed in later cases, established a general prohibition against the execution of trade agreements by employers with one of two or more rival unions engaged in the presentation of conflicting representation claims involving employees, during the pendency of representation proceedings before this agency.

(In the light of the doctrine, so-called, the execution of a trade agreement under the circumstances indicated would be considered interference with the Board's functions in regard to the resolution of the representation question, and a breach of the employer's obligation to remain neutral. See also *William Penn Broadcasting Company*, 93 NLRB 1104; *Ensher, Alexander and Barsoom, Inc.*, 74 NLRB

1443; Henry E. Spiewak, et al., d/b/a I. Spiewak and Sons, 71 NLRB 770; and related cases.)

By virtue of its reliance upon this doctrine, however, in a situation involving a decertification petition, the Respondent must, necessarily, be charged with knowledge, also, as to the limitations of the decisional principle involved. These limitations, indeed, would be operative as a matter of law, irrespective of the Respondent's knowledge, in the determination of any question raised as to the propriety of its conduct. Specifically, I find, the limitation established by this agency in the Penn Broadcasting case would be applicable here. In that case it was pointed out that:

* * * a broad application of the doctrine * * * would serve only to deprive employees of the benefits of an uninterrupted bargaining relationship whenever a clearly unsupportable or specious rival claim is made upon an employer * * * we conclude that the pendency of a petition for certification imposes no duty upon an employer to refrain from continuing exclusively to recognize and deal with an incumbent bargaining representative, such as we have here, unless the petition has a character and timeliness which create a real question concerning representation.

Did the petition, in this case, possess the requisite "character and timeliness" indicated? I find myself led to the conclusion that it did not.

One of the essential elements involved in any de-

termination with respect to the existence of a question of representation is a finding in regard to the existence or nonexistence of a so-called "contract bar" in the case. The Respondent, therefore, while predicated its refusal to negotiate with the Union in regard to a strike settlement on the pendency of the decertification petition, must be charged with knowledge of this agency's established rule in regard to the application of "contract bar" principles in decertification cases. In the Thirteenth Annual Report of the Board, at page 29, its policy in this respect was set forth as follows:

In Matter of Snow & Nealley (76 NLRB 390), the Board enunciated the policy of applying the usual contract bar principles and other rules of decision involved in prior years, to decertification proceedings. Consequently, whether in certification or decertification proceedings, the Board's general rule continued to be that a valid written collective bargaining agreement, signed by the parties and effective before the petitioner raised a question of representation, extending for a definite and reasonable period, and embodying substantive terms and conditions of employment, constitutes a bar to a petition for an election among the employees covered by such contract until shortly before its terminal date. This rule has equal applicability to newly executed agreements and to those which take effect pursuant to automatic renewal clauses.

The Respondent contended, at the August 31st conference, that a question with respect to representation had been raised by the decertification petition. Yet, at the same time, it was entirely aware of the fact that its contract with the Union had been renewed automatically earlier in the year, for a term of reasonable duration—and that it was, therefore, in full force and effect when the decertification petition was filed. The petition on its face, indeed, acknowledged the existence of the contract as a current commitment of the firm. And the Respondent had been served with a copy. Under the circumstances, it was obligated to determine, at its peril, whether the petition had a “character and timeliness” sufficient to create a real question with respect to representation. In the achievement of a determination with respect to this aspect of the situation, on the basis of statutes currently effective and authoritative legal opinions, the Respondent was not helpless; its labor relations director, a member of the bar, clearly possesses—and did possess, at all material times—the fund of knowledge in this specialized field necessary to reach the required conclusion. And even if it could be assumed, for the sake of argument, that he gave no consideration, in fact, to the status of its current agreement with the Union as a bar to the decertification petition, such an omission on the Respondent’s part would confer no absolution. The obligation would still rest with this agency, under prescribed statutory precedures, ultimately to determine, after full litigation, whether a real question with respect to

representation had existed. And under applicable decisional doctrine, as noted, none may be found. It follows, therefore, and I find, that the Respondent's refusal to negotiate with the Union in regard to a strike settlement rested upon inadequate grounds, and involved an unfair labor practice.

(It may be worthy of note, in passing, that the Respondent's labor relations director cited no reason other than the pendency of the decertification petition, as a justification or explanation for its rejection of the Union's overture in regard to a possible strike settlement. Indeed, this appears to have been the only reason evolved by the Respondent's management prior to the conference, to justify the position which it took. See the testimony of the firm's production manager. Counsel for the Respondent now argues however, for the first time, that the Union representatives attended the meeting with "closed minds" since they sought to secure the Respondent's unqualified agreement to settle the strike on the basis of the formula which the Fact Finding Panel was expected to evolve; it is contended, that this agency cannot find the Respondent guilty of an improper refusal to bargain, in view of the Union's alleged "refusal" to negotiate in good faith. The short answer to this contention, however, may be found in the Respondent's concession that Howden merely stated the Union's desire to "talk" about the proposal, and that Hughes rejected it, out-of-hand, as inapplicable to the Respondent on the basis of the pendency of the decertification petition. The situation therefore

never reached the point, argued by counsel, at which it could have been determined that the Union's position was, actually, inflexible.)

The Respondent's letter of September 2, 1954, also, ostensibly dispatched as a notice to the Union that its trade agreement with the firm had been terminated, cited no reason for its cancellation. And no reason was thereafter communicated to the Union representatives. In the absence of any proffered explanation, then, it would certainly seem to be inferable, as the General Counsel argues, that the Respondent considered the contract in full force and effect until the letter's dispatch.

(Nothing in the record, indeed, would compel, or even suggest, a contrary conclusion; President Giustina's only reference, previously, to the status of the contract appears to have been that embodied in his inquiry of Business Agent Howden, after the strike began, as to whether the Union considered the agreement to be in force. Howden's reply, indicative of his belief in the continued effectiveness of the contract, was never thereafter challenged.)

As has been pointed out, the Respondent made no effort to justify its action as a notice of termination effect as of the contract's expiration date. The letter was intended to serve as a termination of the agreement instantane. Its Article XIII, however, made no provision for such action by either party. If any colorable ground for the Respondent's action existed at all, it could only have been found

dehors the agreement. No such grounds, however, were cited.

I find it impossible to escape the conclusion that the Respondent terminated its agreement with the Union in a further effort to justify its refusal to negotiate with that organization in regard to a strike settlement. It would, of course, be speculative to conclude that the Respondent's action was motivated by a desire to correct the deficiency in its legal position, previously noted, with respect to the applicability of the Midwest Piping doctrine as a bar to negotiations during the pendency of the decertification petition, though the Respondent's counsel has admitted that the termination notice was sent in the hope that a Board election would follow to resolve all questions as to the Union's status. Whatever the motives of the Respondent may have been, however, there can be no doubt that its letter of September 2, 1954, was reasonably calculated to impair the Union's position as the exclusive representative of the firm's employees, and that it could be expected at the very least to persuade them, whether strikers or strike breakers, that the Union had lost its influence as their bargaining agent. Under all the circumstances, therefore, the dispatch of the letter must also be characterized as a refusal to bargain in good faith with the Union, and as interference, restraint, and coercion directed to the Respondent's employees.

In the light of the available evidence there can be no doubt that each element in the Respondent's course of action as detailed above, and its entire

course of conduct, involved the unfair labor practices found and served, necessarily, to convert the Union's antecedent economic strike into an unfair labor practices strike. Maurice Embroidery Works, Inc., 111 NLRB No. 171, 35 LRRM 1663. Objective evidence as to the effect of the Respondent's course of conduct in this regard, and the consequential prolongation and extension of the strike, may be found in the record. Specifically, it may be noted that the Respondent's employees still on strike after August 5, 1954, voted overwhelmingly—at a regularly called Union meeting—to return to work as a group. In effect, this was a vote to extend or continue the strike, despite the apparent success of the back-to-work movement and the resumption of operations at the Respondent's plant. It should be noted, also, that the Respondent's operation was the only one previously under contract with a constituent local of the District Council at which the so-called "industry-wide" strike remained current after the publication of the Governors' Proposal with respect to a strike settlement.

(The undisputed testimony of District Council Secretary Kraal, which I credit, establishes that 30-32 of the firms under contract with its constituent locals had reached some fixed or interim settlement with respect to the wage issue prior to the June 21st strike deadline. Between that date and August 26, 1954, when the Governors' Proposal was published, about 23-25 firms settled. And about 23-26 firms settled thereafter, on the basis of the proposal. With respect to the Union, in particular,

the record shows that it had had five firms, in addition to the Respondent, under contract prior to the strike deadline; of this group, three had settled on terms acceptable to the Union, I find, before the 21st of June. One had proffered an acceptable settlement proposal on the 22nd; the other accepted the Governors' Proposal, as noted.)

An inference that the Respondent's course of conduct, as herein found, had raised additional issues in its dispute with the Union, and thereby prolonged the strike, would seem to be inescapable.

This conclusion, however, need not be left to inference alone. At the January 8, 1955, conference the Respondent was effectively put on notice that the Union would insist upon some disposition of the new issues created by the firm's course of conduct, as a condition precedent to the resumption of negotiations with respect to the wage issue previously in dispute. In taking this position, the Union representatives made it abundantly clear, I find, that the issues newly raised by the Respondent had become operative factors in the continuation of the dispute and the continued presence of the Union's picket line. Their statements in this connection must be characterized as cogent proof with respect to the causal relationship between the conduct herein characterized as violative of the statute and the prolongation of the strike. Cf. *Harcourt and Company, Inc.*, 98 NLRB 892, 909, in which the necessity of proof sufficient to establish such a relationship has been explicated.

(The Respondent argues the absence of any casual connection between its course of conduct and the prolongation of the strike on the ground that "control" of the controversy had been delegated to the District Council and the Northwest Council of Lumber and Sawmill Workers, and that these organizations had decreed the strike's continuation until the Respondent's acceptance of the "Governor's formula" as a settlement basis. The contention must be rejected. Most strikes, economic in origin, which are converted into unfair labor practice strikes acquire their character as such, in law, despite the persistence of the original dispute which led to the strike—and often as a result of the failure of the parties to resolve their economic differences. The pendency of unresolved economic issues, therefore, may not be considered sufficient, in and of itself, to prevent the conversion of any work stoppage into an unfair labor practice strike, if the evidence establishes the employer's participation in conduct, violative of the statute, which has, in fact, prolonged the dispute.)

Under established decisional doctrine, it may be taken as datum that an employer may not discharge employees for engaging in legal non-tortious, strike activity or other protected concerted action. *Colonial Fashions, Inc.*, 110 NLRB 1197, 1203; *Cowles Publishing Company*, 106 NLRB 801, affirmed 214 F. 2d 708; *Price Valley Lumber Company*, 106 NLRB 26, affirmed 216 F. 2d 212. It may also be taken as an elementary principle of applicable law that an employer is obligated to bargain with the statutory

representative of its employees, even during the course of a strike, so long as the statutory agent's status, as such, has not been terminated or otherwise, in good faith, cast in doubt. *N. L. R. B. v. Highland Shoe, Inc.*, 119 F. 2d 218, enf'g 23 NLRB 259. Neither justification for the Respondent's refusal to negotiate, in this case, has been established by the available evidence. Upon the entire record, therefore, I find that the Respondent's course of conduct between July 28, 1954, and September 2, 1954, previously detailed, whether considered in its totality, or as a series of severable incidents—involved a refusal to bargain in good faith with the Union, as the statutory representative of its employees in an appropriate unit, and interfered with, restrained, and coerced these employees in the exercise of rights statutorily guaranteed. And in accordance with the General Counsel's contention, it is further found that the firm's course of conduct converted the strike then current into an unfair labor practice strike, and that it served to extend and prolong the dispute beyond the time within which it might conceivably have been settled if confined to the wage issue only.

In the course of the present litigation, the Respondent argued, for the first time, that the strike action sponsored by the Union involved a breach of their trade agreement, and that its notices of termination with respect to the agreement were dispatched "following" the breach. Upon the entire record, however, I could not find this contention an

effective defense. At the outset, it may be noted that the Respondent never advanced the contention while the Union's strike action and its picket line were being maintained. Secondly, I find it worthy of note that the Respondent's answer contains no allegation that its action in terminating the agreement was justified by any material breach of the agreement's terms by the Union; the Respondent merely alleges that its notice of termination was dispatched, and subsequently reiterated, after the alleged breach had occurred.

(In his brief, counsel for the Respondent has, indeed, sought to justify the firm's contract termination notices on the ground that the Respondent "thought" at the time that the Union's strike action had breached its agreement. Reference is also made to the fact that the Respondent's plant was then in "normal" operation; it is argued that the willingness of its employees to disregard the Union's picket line, viewed in the light of their action with respect to the decertification petition, constituted an "emphatic disavowal" of the organization's representative status. I find the arguments unpersuasive as justification for the Respondent's action.

It is true that Natale Giustina, as a witness, had testified that the firm's original termination notices were sent, after full discussion, because of the fact that the back-to-work movement and the decertification petition had created a "jumbled mess" with respect to the Union's representative status, and be-

cause of the Respondent's desire to "clear the air" in that respect. There is no evidence, however, that these subjective considerations were cited at the time. On the 31st of August, in fact, Hughes had advised the Union representatives that the Respondent would be willing to bargain in the absence of the representation issue raised by the decertification petition.

President Giustina also testified that the Respondent's management had "given consideration" to the fact that the Union had breached its agreement by the strike action. This testimony was given, however, by means of an affirmative reply to a leading question; when questioned thereafter, in general terms, as to the other factors considered by the Respondent prior to the termination notice, Giustina testified that the management had considered, "The fact that the local gave consideration that we had broken the contract." In so testifying, the Respondent's president obviously misspoke himself. And the fact that he did so, immediately after hearing a leading question on the subject, may be taken, at the very least, as an indication that the concept of a contract breach was new to him; I find that it represents an afterthought, and that it played no part in the firm's decision to send the September 2d letter.)

Even if it could be assumed however, for the sake of argument, that the Respondent's plea, and its course of conduct, properly raise an issue as to the Union's alleged breach of a contractual commit-

ment, a determination adverse to the firm would appear to be required on the merits.

Under Article II of the agreement, the parties established certain procedures calculated to promote the analysis and adjustment of "all complaints arising out of the collective bargaining relationship" between them, and went on to establish a procedure to be utilized for the adjustment of "employee grievances" as contractually defined. Article IX dealt with strikes and lockouts. It declared specifically that the grievance procedures established under Article II would be considered "adequate" to provide a "fair and final determination" with respect to all "grievances" arising under the agreement's terms. I note, however, that the language of the agreement with respect to strikes and lockouts did not interdict such action during the contractual term, but merely provided that no such action should be undertaken or sanctioned until every "peaceable method of settlement" provided under Article II of the agreement had been tried without success. The contract went on to specify certain steps to be taken prior to any strike or lockout action, but provided only three sanctions in the event of any failures or omissions in that connection; the Union obligated itself to "endeavor" to secure the return of any strikers in order to facilitate the peaceful settlement of the dispute in accordance with contractually established procedures, the Respondent reserved its right to discipline any employees involved in strike action violative of the

agreement, and the parties agreed that no grievance should be discussed or processed for the duration of any violation.

In a separate and severable provision, the agreement provided that wages would “continue” subject to the right of either party to request a general change, at any time, by appropriate written notice.

The record reveals some argument as to whether Article IX of the agreement was intended to establish procedures applicable in cases of impasse with respect to wage negotiations, or was, in fact, limited in its applicability to instances involving other unresolved grievances, of a collective or individual character. Neither contention was established beyond doubt. They were not, however, extensively litigated. If they had been, I would now be constrained, upon the entire record, to find that the Respondent, chargeable with the burden of establishing its own affirmative defenses, had not succeeded with respect to this issue.

(There is some testimony by President Giustina, for example, that the contractual revisions negotiated in 1953, with respect to the strike and lockout clause had been specifically motivated, from the Respondent’s point of view, by a desire to eliminate the possibility of “quickie” strikes over grievances.)

I would find it by no means clear, in short, that the Respondent was privileged to treat a strike incidental to general wage negotiations as a material breach of the agreement’s strike and lockout clause.

The Respondent's contention, therefore, that the strike call involved a breach of the agreement, and its implied contention that such a breach permitted it to elect the agreement's termination, must be rejected.

(The Respondent's answer also contains a contention, by way of affirmative defense, that the Union's strike action constituted an unfair labor practice—within the meaning of the statute—apart from its character as a contractual breach; the firm argues, apparently, that the Union ought to be held responsible for a refusal to bargain in good faith because it resorted to strike action prior to the expiration date of the agreement with respect to which it desired to negotiate modifications. See Section 8 (d) (4) of the Act, as amended. It is contended that the strike, therefore, relieved the Respondent of any obligation to deal with the organization. I would find the argument without merit. *Lion Oil Company*, 109 NLRB 680, 681-686, 34 LRRM 1410, set aside 221 F. 2d 231 (C. A. 8), pet. for cert. filed July 15, 1955. In addition, it should be noted that the Respondent, prior to the instant case, never sought to justify its refusal to deal with the Union, or its attempt to terminate their agreement, on these grounds; it continued to deal with the Union and its designated representatives after the strike began, directly and through the Willamette Valley Lumber Operators Association committee, without even raising a question as to the Union's alleged statutory violation. The Respondent disclaims any intention to "push"

the point, however—and I find it unnecessary, therefore, to analyze the contention in detail.)

As a part of its case the Respondent offered the transcript, previously noted, of its January 8th conference with the Union representatives in regard to its proposal for the effectuation of a wage increase at the Eugene plant comparable to that recommended by the Fact Finding Panel. Implicit in the Respondent's presentation is a contention that it displayed its willingness to negotiate with the Union at this conference, in regard to wage rates, and that the Union representatives were the ones who refused to discuss the issue. Any such contention must likewise be rejected. The Respondent, it is true, did express its desire to negotiate with respect to a wage increase or at least to solicit the Union's "approval" of a wage increase in conformity with the industry-wide pattern established by the Fact Finding Panel, in its final report. The Union, however, did nothing more than insist that the Respondent's course of conduct since June 21, 1954, had complicated the strike situation and created new issues, which would have to be settled first. In substance, therefore, the parties were unable, at the outset to agree upon the subjects to be discussed or negotiated. I cannot however, in the light of the record, accept the contention that the Union's position was so unreasonable as to evince a rejection of the collective bargaining principle.

(The Respondent's counsel argues, also, that the Union did not request the Respondent to bargain on

the 8th of January, with respect to the issues as it saw them. This may very well have been true—although it is clear that the Union representatives indicated their willingness to discuss the issues, then, or at any time. In the light of the available evidence, however, there would seem to be no need to consider the implications, if any, of the Union's alleged failure to request negotiations. I find it sufficient to note that the Union representatives made no effort to prevent discussion with respect to the matters then in dispute.)

And in any event, it would seem to be clear that the Respondent's effort to secure the Union's approval for its effectuation of the long disputed wage increase, could not—under the circumstances herein found—counteract the effect of its antecedent unfair labor practices. *McCarthy-Bernhardt Buick, Inc.*, 100 NLRB 1475, 1479-1480; *Augusta Broadcasting Company*, 58 NLRB 1493, 1505.) And I so find. Any contention to the contrary, implicit in the Respondent's presentation, must be rejected as deficient in merit.

The Respondent, finally, argues that it was under no obligation to bargain with the Union, since that organization's authority to negotiate with respect to wages had been "permanently transferred" to the District Council; the Union, it is contended, thereby rendered itself incapable of bargaining, in good faith, with respect to general wage issues. The argument lacks merit. Despite the Respondent's attempt

to characterize the Union's action as a "surrender" of its responsibilities with respect to the representation of the firm's employees, there can be no doubt that the authority to negotiate which it delegated to the Council was, in a very real sense, limited. Its own representative, Howden, functioned as an active participant in the work of the Council's committee. That committee made no effort to negotiate or execute complete agreements; nor does it appear that Council representatives participated, as such, in the day-to-day administration of any contracts executed by the Union, or any of its sister locals, except upon invitation, and then only to assist the local involved. The Council, as such, does not appear to have initialed or executed wage agreements; when reached, such agreements were apparently embodied in definitive contracts negotiated and signed by its constituent locals. And in the light of the available evidence with respect to the Respondent's contract history, in particular, I cannot accept the argument that the Union's action involved an "abdication" of its statutory responsibilities as a bargaining agent.

The District Council has advanced no claim to status as the designated representative of any employees. And the Respondent has not been charged with any refusal to bargain vis-a-vis the Council or its representatives.

(The absence of any statutory obligation to bargain with the Council, therefore, under Section 9 (a) of the Act, as amended, must be considered immaterial. Cf. *Standard Oil Company*, 92 NLRB 227,

236. And the Respondent's reliance upon the cited case may be rejected as misplaced.)

In the final analysis, the Council appears to have functioned only as the representative of its constituent locals, in the presentation of coordinated wage demands. And, despite the Respondent's contrary contention, I so find. It follows, and I further find, that the Union did not—by its delegation of authority in connection with the negotiation of wage issues—withdraw from collective bargaining with the Respondent, or prevent negotiation in good faith for the purpose of reaching an agreement.

(The Respondent even charges that the Union's conduct, in this connection, involved an independent refusal to bargain and constituted a union unfair labor practice causally connected with the strike. In the absence of evidence, however, tending to establish that the designation of the District Council as the representative of its constituent locals, in the 1954 negotiations, was reasonably calculated to forestall or prevent agreement on the wage issue, the contention must be rejected.)

The obligation of an employer to reinstate unfair labor practice strikers upon their unconditional application for such re-employment, and to dismiss, if necessary, any employees hired to replace them on or after the date on which their action was converted into an unfair labor practice strike, is well established. *N. L. R. B. v. Mackay Radio & Telegraph Company*, 304 U. S. 333, 345; *Pecher Lo-*

zenge Co., Inc., 98 NLRB 496, 499, and subsequent cases. The responsibility of the employer affected, in such cases, may not be considered dependent upon proof that specific strikers have not been replaced, or that their former or substantially equivalent employment is, in fact, available for them. East Texas Steel Castings Company, Inc., 108 NLRB 1078, 1081; Pecheur Lozenge Co., Inc., 98 NLRB 496, 498. Nor may it be treated as dispelled or waived by virtue of the fact that certain designated strikers may have applied for reinstatement, by name, after the Union's dispatch of a mass application in behalf of all of the employees involved.

It may very well be true, as the Respondent herein sought to prove, that a smaller crew has been required to maintain its Eugene operation since work resumed.

(Extensive testimony was offered in this connection, calculated to establish that the strike had seriously impaired the Respondent's ability to implement certain of its plans with respect to the maintenance and improvement of its log supply—and that the Respondent, therefore, has never been able to resume the second shift operation interrupted by the work stoppage.)

This fact, however, if it be a fact, would affect the nature and scope of my recommendations, and this agency's order, if any; it would not affect the propriety of a legal conclusion with respect to the existence of the statutory violation and the necessity for appropriate remedial action.

(Essentially, the problem seems to have developed since the concerted activity of the Respondent's employees, itself, created a business problem, which—from the standpoint of the firm—made the abandonment of the second shift necessary or desirable. In such a situation the Respondent's action, though motivated—insofar as the record shows—by business necessity, would necessarily impair the exercise, by its employees, of legitimate rights. It would seem to be essential, to effect a balance which would “work out an adjustment” between the rights involved. Cf. *Republic Aviation Corp. v. N. L. R. B.*, 324 U. S. 793, 797. Such a balance may appropriately be worked out in connection with the formulation of a remedy for the unfair labor practices found.)

In this connection, also, the Respondent sought to adduce evidence specifically designed to show that designated strikers had not, in fact, been subjected to discriminatory treatment. With respect to 40 individuals, an exhibit was offered to establish the “termination” of their employment prior to the strike, or prior to the Union's request for their reinstatement; this group, allegedly, included men who had resigned or reported their lack of interest in reinstatement prior to January 19, 1955, men terminated at various times for physical disability, and men discharged after their return as strike-breakers because of their “failure” to report for work thereafter. The Respondent also listed 14 men, alleged to be discriminatees, who had returned to work after July 28, 1954; of this number, seven were shown to

have been subsequently terminated however, allegedly for a "failure" to report for work. The Respondent claimed to have no information as to whether any of those terminated for their failure to report had, in fact, rejoined the strikers. See the *Pecheur Lozenge* case, previously cited, at footnote 7, for a discussion of the reinstatement and back pay rights of any employees so situated.

(The Respondent listed 29 workers, in a third exhibit, for whom work allegedly would not have been available after August 8, 1955, because of the second shift's discontinuance; these employees were described as men newly hired for the second shift between April 25, 1954, and the 21st of June, or first shift workers hired after the earlier date who would have been "bumped" upon the termination of the second shift by reassigned second shift workers with seniority.)

Each of these exhibits involved a tabulation based upon the Respondent's record; they reflect certain assumptions, employed in their preparation, which the parties were not prepared to litigate expeditiously. Obviously, they could not have been accepted at face value, in the light of the General Counsel's objection, to establish the identity of any strikers not entitled to reinstatement. The exhibits were, therefore, rejected—and, at this time, that ruling is reaffirmed. To the extent that they may adumbrate defenses available to the Respondent, with respect to the firm's liability to individual strikers,

they may be offered for consideration in the formulation of a compliance program.

In accordance with the General Counsel's contention, I find that the refusal of the Respondent, on and after January 19, 1955, to reinstate any of the Union's strikers, constituted discrimination with respect to their hire and employment tenure, to discourage Union membership and concerted activity for mutual aid and protection, and that it was reasonably calculated to interfere with, restrain, and coerce the firm's employees in their exercise of rights statutorily guaranteed.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent, set forth in Section III above, which occurred in connection with its operations as described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead, and in this instance have led, to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Since it has been found that the Respondent engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action, including the posting of appropriate notices, designed to effectuate the policies of the Act, as amended.

Specifically, since it has been found that the Re-

spondent engaged in certain acts of interference, restraint, and coercion, it will be recommended that it cease and desist from such conduct.

It has also been found, among other things, that the Respondent refused to bargain collectively with the Union, on and after July 28, 1954, and that its refusal has continued. It will therefore be recommended that the Respondent, upon request, bargain with that organization as the exclusive representative of its employees in the unit found herein to be appropriate for the purposes of a collective bargain, and, if an agreement is reached, reduce it to written form and sign it.

Since it has been found that the Respondent's refusal to re-employ any Union strikers on or after January 19, 1955, the date of their unconditional application for reinstatement, was discriminatory and violative of the statute, I shall recommend that the Respondent, if it has not already done so, offer the employees listed elsewhere in this report, who were on strike as of January 19, 1955, full reinstatement to their former or substantially equivalent positions, dismissing, if necessary, any employees hired since July 28, 1954, to replace them.

(This recommendation will apply, of course, to any employees who may have accepted re-employment for a few days, on or after July 29, 1954, and thereafter rejoined the strikers. If still on strike as of January 19, 1955, they would have been entitled to reinstatement on that date to the same extent as

other strikers, and to compensation for any loss of pay suffered by them as a result of the discriminatory refusal of reinstatement herein found.)

If, after the dismissal of any replacement employees, there are not enough positions available for all of the workers entitled to reinstatement, available positions should be distributed among them, without discrimination because of their Union membership, activity, or participation in the strike, on the basis of a seniority system, or any other nondiscriminatory practice with respect to work assignments previously followed by the Respondent in the conduct of its business. The employees for whom no work may be immediately available, after such distribution, should be placed upon a preferential hiring list, with priorities determined on the basis of a seniority system, or any other nondiscriminatory system previously followed by the Respondent in the conduct of its business; they should be offered reinstatement thereafter, in accordance with such a list, as positions become available and before other persons are hired for the work. *Pecheur Lozenge Co., Inc.*, *supra*, pp. 499-500. Reinstatement, as recommended in this report, should be effectuated without prejudice to the seniority of the employees or any of their other rights and privileges.

It will also be recommended that the Respondent reimburse all of the employees entitled to reinstatement for any loss of pay they may have suffered by reason of the Respondent's discrimination with respect to them, by the payment to each of a

sum of money equal to the amount which he normally would have earned as wages during the period from January 19, 1955, the date of the Respondent's refusal to reinstate the employees, as a group, upon' their unconditional application, to the date of the Respondent's offer to reinstate the employees or place them on a preferential hiring list in the manner described above, less his net earnings during that period. Cf. *Crossett Lumber Company*, 8 NLRB 497, 498; *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7, ff. Such pay losses should be computed on the basis of separate calendar quarters, in accordance with the formula which the Board now utilizes. *F. W. Woolworth Company*, 90 NLRB 289; *N. L. R. B. v. Seven-Up Bottling Company of Miami, Inc.*, 344 U. S. 344, ff.

(Should a Board order in this case be necessary, in the event of any failure on the Respondent's part to comply with these recommendations, it will be recommended that the Board expressly reserve the right to modify the reinstatement and back-pay provisions of its order if such action should become necessary by reason of a change of conditions not appearing in the record, and to make such supplements to its order as may become necessary in order to define or clarify their application to a particular set of circumstances not now apparent. *Differential Steel Car Company*, 75 NLRB 714, 732; *Toledo Desk and Fixture Company*, 65 NLRB 1086, 1109-1111; and a host of similar cases.)

Since a discriminatory refusal to reinstate other-

wise qualified workers upon their unconditional application after an unfair labor practice strike “goes to the very heart of the Act” and the rights therein guaranteed (N. L. R. B. v. Entwistle Manufacturing Company, 120 F. 2d 532, 536) I am constrained to find that the unfair labor practices attributable to the Respondent disclose an attitude of opposition to the statute’s purposes with respect to the protection of employee rights in general; they are closely related to the other unfair labor practices proscribed by the Act, as amended, and a danger with respect to the commission of such unfair labor practices in the future is to be anticipated from the conduct of the Respondent in the past. The preventive purposes of the statute would be thwarted, then, unless the remedial action in this case, and any necessary order, can be made co-extensive with the threat. In order, therefore, to make the interdependent guarantees of Section 7 more effective, to prevent any recurrence of the unfair labor practices, to minimize industrial strife which burdens and obstructs commerce, and thus to effectuate the policies of the statute, it will be recommended that the Respondent cease and desist from infringement in any other manner upon the rights guaranteed in Section 7 of the Act, as amended.

Finally, in order to secure expeditious compliance with the recommendations made herein with respect to back pay and reinstatement, it will be recommended that the Respondent preserve and, upon request, make available to the Board and its agents, all pertinent payroll and other records.

Conclusions of Law

In the light of the foregoing findings of fact, and upon the entire record in the case, I make the following conclusions of law:

1. The Respondent is an employer within the meaning of Section 2 (2) of the Act, engaged in commerce and business activities which affect commerce within the meaning of Section 2 (6) and (7) of the Act, as amended.

2. Local 2611, Lumber and Sawmill Workers, AFL, is a labor organization within the meaning of Section 2 (5) of the Act, as amended.

3. All of the employees at the Respondent's sawmill and planing operations in Eugene, Oregon, and the log dump and pond located at Springfield, Oregon, exclusive of office and professional employees, guards, and supervisors, as defined in Section 2 (11) of the Act, constitute a unit appropriate for the purposes of a collective bargain within the meaning of Section 9 (b) of the Act, as amended.

4. Local 2611, Lumber and Sawmill Workers, AFL, was on June 21, 1954, and at all times thereafter has been, entitled to act as the exclusive representative of the employees in the unit described above for the purposes of a collective bargain, within the meaning of Section 9 (a) of the Act, as amended.

5. By its refusal to bargain collectively with the Union as the exclusive representative of its employees in a unit appropriate for the purposes of a col-

lective bargain, on and after July 28, 1954, the Respondent engaged and has continued to engage in unfair labor practices within the meaning of Section 8 (a) (5) of the Act, as amended.

6. By its interference with, restraint, and coercion of employees in their exercise of rights guaranteed under Section 7 of the Act, the Respondent engaged and has continued to engage in unfair labor practices within the meaning of Section 8 (a) (1) of the Act, as amended.

7. By its unfair labor practices as herein found, the Respondent converted the Union's economic strike action of June 21, 1954, into an unfair labor practice strike, and prolonged the strike.

8. By its refusal to reinstate unfair labor practice strikers upon the Union's unconditional request for their reinstatement, on and after January 19, 1955, the Respondent discriminated in regard to their hire and employment tenure to discourage membership in Local 2611, Lumber and Sawmill Workers, AFL; the Respondent thereby engaged and has continued to engage in unfair labor practices within the meaning of Section 8 (a) (3) of the Act, as amended.

9. The unfair labor practices found are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act, as amended.

Recommendations

Upon these findings of fact and conclusions of

law, and upon the entire record in the case, I recommend that the Respondent, Giustina Bros. Lumber Co., and its officers, agents, successors, and assigns, should:

1. Cease and desist from:

(a) Interference with, restraint, or coercion of its employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist Local 2611, Lumber and Sawmill Workers, AFL, or any other labor organization, to bargain collectively through representatives of their own free choice, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection, or to refrain from any or all such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act, as amended;

(b) Refusal to bargain collectively with Local 2611, Lumber and Sawmill Workers, AFL, as the exclusive representative of all of the employees at its sawmill and planing operations in Eugene, Oregon, and the log dump and pond located at Springfield, Oregon, exclusive of office and professional employees, guards, and supervisors, as defined in Section 2 (11) of the Act, with respect to labor disputes, grievances, rates of pay, hours of employment, and other terms and conditions of employment;

(c) Discouragement of membership in the above-

named labor organization, or any other, by a refusal to reinstate any of its employees engaged in concerted activity as unfair labor practice strikers, because of their union membership or activity, or by discrimination in any other manner with respect to their hire or employment tenure, or any term or condition of their employment.

2. Take the following affirmative action, which I find will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Local 2611, Lumber and Sawmill Workers, AFL, as the exclusive representative of all the employees in the above-described unit, with respect to labor disputes, grievances, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement;

(b) Offer to employees who were on strike as of January 19, 1955, insofar as it may not already have done so, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, or place them on a preferential hiring list, in the manner set forth in the "Remedy" section of this report, and make them whole for any loss of pay or other incidents of the employment relationship which they may have suffered by reason of the Respondent's discrimination against them, in the manner set forth in the aforesaid "Remedy" section, dismissing, if necessary, any persons hired on or after July 29, 1954, who were not in the Respondent's employ on that date;

(c) Preserve and make available to the National Labor Relations Board or its agents, upon request, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary for an analysis of the amounts of back pay due and the reinstatement rights of employees in accordance with these recommendations;

(d) Post at its places of business in Eugene and Springfield, Oregon, copies of the notice attached to this report as an Appendix. Copies of the notice, to be furnished by the Regional Director of the Nineteenth Region, as the agent of the Board, should be posted immediately upon their receipt, after being duly signed by a representative of the Respondent. When posted, they should remain posted for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps should be taken by the Respondent to insure that these notices are not altered, defaced, or covered by any other material;

(e) File with the Regional Director of the Nineteenth Region, as the agent of the Board, within twenty (20) days of the date of service of this Intermediate Report and Recommended Order a statement in writing setting forth the manner and form in which it has complied with these recommendations.

Recommended Order

If, within twenty (20) days after the date of service of this Intermediate Report and Recom-

mended Order, the Respondent satisfies the Regional Director, as the agent of the Board, that it has complied, or will comply with the recommendations herein made, it is recommended that the National Labor Relations Board issue an order or take other appropriate action to close the case on compliance. Unless the Respondent satisfies the Regional Director, within twenty (20) days after the date of service of this Intermediate Report and Recommended Order that it has complied or will comply with the foregoing recommendations, it is recommended that the National Labor Relations Board issue an order requiring it to take such action.

Dated this day of September, 1955.

MAURICE M. MILLER,
Trial Examiner.

APPENDIX

Employees Entitled to Reinstatement

Bearden; Bellmore, John; Blanton, Gene; Bloom Orville; Bogart, Charles; Bowers, G. P.; Bratton, Leroy; Breckwig, R. L.; Brock, Wallace; Brooks; Brown, Billy; Brown, E.; Bruce, Denver; Bryant, Melvin; Buel, Roy; Butenscheon, Frank; Brock.

Carlson, John; Carpenter, W. G.; Casper, George; Casteel, Iley; Caudle, Loyal; Clark, Glenn; Cook, Ray; Cornwall, Arthur; Cox, Floyd.

Dietz, Frank; Dilbeck, Ray; Driggs, Otis.

Eaton, Charles; Edmon, David; Elliott, Frank; Erickson, Eylar; Evoniuk, Joe.

Fitzpatrick; Franks, De.

Gandy, Jack; Gentry; Goldenberg; Gray; Greenhoo, Edgar; Gregg, Albert; Gregg, Dale; Gregg, Ross; Gregg, Vernon; Gutbrod.

Hagg, Martin; Halpain; Harmon, Elmo; Hassett, Ed; Hedegaard, John; Hempel, Bernard; Hendricks, H. T.; Hicks, W. R.; Hodge, O. D.; Hopson, William; Huber; Huffman, Leroy.

Jackson, Alvin; Jones, Arthur.

Keopka, Lawrence Kynard, Earl.

LaCross, A. J.; Lambert; Lawson, Delbert; Lawson, John; Lebow, Samuel; Lemmer, Charles; Lloyd; Long, Bomer.

Markell, Roy; McNair, William; Malpass, John; Matthews, Robert; Mayo, Walter; Meade, Clair; Meadows, H. M.; Meskimen, Vaughn; Mikkelsen, Merlyn; Miller, Virgil; Molinda, Fred; Moore, J.; Mullin, P.; Mortenson, Stanley.

Nash, Earl; Noble, Roy L.; Noble, Roy; Nichols, Fred.

Olsen, Harold.

Palmer, William; Pappel, Henry; Parent, Richard; Paris, J. H.; Parker, Paul; Peterson, P.; Phillippe, John; Pickett, John; Pike, Leonard; Potter, Maurice; Price, Clarence.

Rasmussen, Glen; Reinking, Richard; Reed; Rice, Verlin; Richards, James; Roupe, Donald.

Scarlett, Robert; Scevins, Thurman; Scheid; Sederlin, Harold; Smith, Anthony; Smith, Lewis; Snyder; Sparks, Dean; Strehlow, Date.

Tribe.

Van Dusen, Verl V.; Vladik.

Walker, O. D.; Warren, Al; Watts, Darwin;
Watts, Eugene; Williams, James; Williams, Joe;
Windham, Charles; Wright, Louis.

Yates, Joe; Yancy, Harold; Yoder, Richard.

Zarzan, Alex; Zietner, Ed; Zymbach, Johnny.

APPENDIX

Notice to All Employees Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We Will Not refuse, upon request, to bargain collectively with Local 2611, Lumber and Sawmill Workers, AFL, as the exclusive representative of the employees at our sawmill and planing operations in Eugene, Oregon, and the log dump and pond located at Springfield, Oregon, exclusive of office and professional employees, guards, and supervisors.

We Will Not discourage membership in the above-named labor organization, or any other, by a refusal to reinstate any of our employees because of their Union membership or activity, or by discrimination against them in any other manner with respect to their hire or employment tenure, or any term or condition of their employment.

We Will Not in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organ-

izations, to join or assist Local 2611, Lumber and Sawmill Workers, AFL, or any other labor organization, to bargain collectively through representatives of their own free choice, or to engage in other concerted activity for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

We Will bargain collectively, upon request, with Local 2611, Lumber and Sawmill Workers, AFL, as the exclusive representative of the employees in the bargaining unit described below, with respect to rates of pay, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a written and signed agreement. The bargaining unit is:

All employees at our sawmill and planing operations in Eugene, Oregon, and the log dump and pond located at Springfield, Oregon, exclusive of office and professional employees, guards, and supervisors.

We Will, to the extent that we have not already done so, offer all of our employees who were on strike on January 19, 1955, immediate and full reinstatement to their former or substantially equivalent positions, displacing—if necessary—any new employees hired after July 28, 1954, to replace them. If, after such displacement, there are not

enough positions for all such employees, the available positions will be distributed among them in accordance with a seniority system or other non-discriminatory arrangement heretofore applied in the conduct of our business. Any of our employees, previously on strike, for whom employment is not immediately available will be placed upon a preferential hiring list, priority on such list being determined by the seniority system or other nondiscriminatory practice heretofore applied in the conduct of our business. Thereafter, such employees will be offered reinstatement in accordance with the list, as positions become available, and before other persons are hired for such work. Such reinstatement will be without prejudice to their seniority and other rights and privileges.

We Will make our employees whole for any loss of pay each of them may have suffered as a result of our discriminatory refusal to rehire any of them on January 19, 1955, after their unconditional offer to return.

All of our employees are free to become or remain, or refrain from becoming or remaining members of Local 2611, Lumber and Sawmill Workers, AFL, or any other labor organization, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act. We will not discriminate in regard to hire or tenure of employment, or any term or condition of employment,

against any employee because of membership in or activity on behalf of any labor organization.

Dated

GIUSTINA BROS. LUMBER CO.,

(Employer)

By

(Representative) (Title)

This notice must remain posted for 60 days from its date, and must not be altered, defaced, or covered by any other material.

[Title of Board and Cause.]

EXCEPTIONS OF RESPONDENT TO INTERMEDIATE REPORT & RECOMMENDED ORDER

Giustina Bros. Lumber Co., Respondent herein, takes exceptions to the "Intermediate Report and Recommended Order" in this proceeding as follows:

1. To the failure of the Trial Examiner to state his "Findings of Fact and "Conclusions" separately to enable Respondent to comply with the Rules of the Board requiring specific and precise exceptions to be taken to the "Report and Recommended Order."

2. To the finding that the labor contract between Respondent and Local Union #2611 continued to April 1, 1955 (R.p. 2, Ll. 4-8).

3. To the intimation that the no-strike features of the labor contract applied only to grievances (R.p. 2, L. 55).

4. To the conclusion that the contract provided that Union employees should not be required to act as strike breakers (R.p. 4, Ll. 12-14).

5. To the interpretation of the termination article (R.p. 5, Ll. 15-25).

6. To the interpretation of the contract (R.p. 5, Ll. 32-39).

7. To the finding that the District Council represented Local Union No. 2611 (R.p. 6, Ll. 9-14).

8. To the finding that the District Council was the designated agent of Local Union No. 2611 (R.p. 6, Ll. 42-44).

9. To the finding that negotiations were undertaken with the Council (R.p. 7, Ll. 59-61).

10. To the action of the Examiner in going beyond the record (R.p. 8, Ll. 25-35).

11. To the finding that "Respondent's indirect involvement with the Union * * * constituted a part only, of the larger series of negotiations (R.p. 8, Ll. 31-35).

12. To the finding that the Union did not respond to Respondent's attempt to negotiate wages (R.p. 9, Ll. 7-10).

13. To the finding that Respondent did not act to revoke authority to negotiate, or that such negotiation was necessary (R.p. 9, Ll. 33-35).

14. To the finding that Howden "visited * * * in his capacity as District Council Emissary * * *" (R.p. 9, Ll. 55, 56).

15. To the non-sequitur that Hughes participations as a member of the Negotiating Committee, involved Respondent (R.p. 10, Ll. 3-6).

16. To the finding that Local Union No. 2611, undertook strike action (R.p. 10, L. 10).

17. To the finding that the picketing of Respondent's plant was peaceful (R.p. 10, Ll. 12-15).

18. To the failure of the Examiner to find that a copy of the petition of Union Members to "withdraw" authority was given to Respondent by a representative of the Board (R.pp. 10, 11; Ll. 59-13).

19. To the finding that Robertson telephoned Hughes before the meeting of the employees to advise him of the meeting (R.p. 11, Ll. 37-43).

20. To the finding that Hughes testified that a meeting would be held at the plant (R.p. 11, Ll. 45-48).

21. To the failure of the Examiner to follow the stipulation of the parties (R.p. 11, Ll. 48-54).

22. To the finding that the record does not show where Hughes and the Giustina brothers were (R.p. 12, Ll. 8, 9).

23. To the finding that Respondents were at the shop before the meeting of the employees (R.p. 12, Ll. 6, 9-16).

24. To the finding that Hughes asked if all were present who had been invited (R.p. 12, Ll. 18, 19).

25. To the finding that Hughes stood at the head of the group (R.p. 12, L. 33).

26. To the finding that Johnson invited men to a secret meeting in the shop (R.p. 12, Ll. 39-45).

27. To the finding that Hughes asked individuals if they had been invited to the meeting (R.p. 12, Ll. 47, 48).

28. To the finding that Hughes denied that it would be a good thing if Howden were present (R.p. 13, Ll. 1-5).

29. To the finding that Hughes began his remarks as quoted (R.p. 13, Ll. 23, 24).

30. To the finding that no employee left the meeting (R.p. 13, Ll. 37-38).

31. To the finding that Hughes gave the invitees "A thorough scrutiny (R.p. 13, Ll. 39, 40).

32. To the failure to find that the information about the Union's strike vote was given to Respondent by Howden, the Business Agent (R.p. 14, Ll. 45-47).

33. To the finding that Giustina proposed that the men be paid according to individual merit (R.p. 15, Ll. 18-20).

34. To the failure to find that Nat Giustina's remarks were statements of existing conditions in the veneer plant and not proposals to the employees (R.p. 15, Ll. 30-37).

35. To the finding that the stipulation of facts was based upon the notes of Sparks (R.p. 16, Ll. 6-8).

36. To the assumption that Respondent had access to the notes of Sparks, an adverse witness, in drawing the stipulation (R.p. 16, Ll. 6-8).

37. To the finding that an effort was made to characterize Johnson's invitees as trouble makers (R.p. 16, Ll. 39-40).

38. To the finding that the men voted to return to work "under the sponsorship of the Union" (R.p. 17, Ll. 41, 42).

39. To the failure to find that Respondent was not a party to the strike settlement procedure, to the intimations that the industry participated in the settlement proceedings (R.p. 18, Ll. 3-42).

40. To the finding that representatives of Local Union presented a proposal to Respondent on August 31, 1954 (R.p. 18, Ll. 44-46).

41. To the suggestion that representatives of WVLOA were present at the meeting of January 8, 1955, in any capacity (R.p. 26, Ll. 16-18).

42. To the failure to find that the Union was not permitted to negotiate at the meeting of January 8, 1955, (R.p. 21, Ll. 37-43).

43. To the finding that there was discussion of any matter at the meeting of January 8, 1955 (R.p. 21, Ll. 45-55).

44. To the finding that any Union representative was willing to discuss anything at the meeting of January 4, (R.p. 23, Ll. 5-23).

45. To the failure to find that Local #2611 refused to represent all employees without discrimination on account of lack of Union membership (R.p. 23, Ll. 55-58).

46. To the finding that there was an unconditional request for employment (R.p. 24, Ll. 53-61).

47. To the finding that Respondent committed an unfair labor practice (R.p. 26, Ll. 13-16).

48. To the inference that Respondent knew of the back-to-work movement (R.p. 26, Ll. 22-25).

49. To the action of the Examiner in disregarding the stipulation of the parties (R.p. 26, Ll. 27-29).

50. To the finding that Respondent was responsible for Johnson's invitation, if any, to others to attend a meeting (R.p. 26, Ll. 31-33).

51. To the finding that arrangements had been made for the employee meeting in advance (R.p. 26, Ll. 34-45).

52. To the action of the Examiner in finding in contradiction to the stipulation of the parties (R.p. 26, Ll. 47-61).

53. To the finding that Hughes and Respondent had advance notice of the meeting (R.p. 27, Ll. 1-23).

54. To the conclusions that Respondent participated in the back-to-work movement; that Hughes took command of the meetings; that the meeting was pre-arranged (R.p. 27, L. 25-p. 28-44).

55. To the failure to find that Howden, the Business Agent, deprecated the "strike vote" (R.p. 28, Ll. 52-56).

56. To the finding that Respondent proposed a different wage structure and working conditions (R.p. 28, L. 58-p. 29, L. 2).

57. To the finding that Respondent belittled the District Council and suggested the men should think about their own jobs (R.p. 29, Ll. 10-14).

58. To the finding that Respondent attempted to negotiate with the employees (R.p. 29, Ll. 17-21; 51-56).

59. To the finding that Respondent did more than exercise free speech (R.p. 29, L. 58-p. 30, L. 3).

60. To the finding that Respondent negotiated with employees (R.p. 30, Ll. 5-9), threatened strik-

ers (R.p. 30, Ll. 11-18), to the conclusions as to forfeiture of rights (R.p. 30, Ll. 20-29).

61. To the finding that Respondent opposed the purposes of the statute (R.p. 30, Ll. 44-47).

62. To the conclusion that Respondent's argument that the letter notice was lawful amounted only to a play on words (R.p. 30, 31, Ll. 57-2).

63. To the finding that Respondent's letter constituted a threat and was unlawful (R.p. 31, Ll. 3-9).

64. To the finding that Respondent coerced the strikers and attempted to negotiate individually (R.p. 31, Ll. 11-22).

65. To the finding that Respondent discharged employees (R.p. 31, Ll. 24-30).

66. To the finding that Hughes categorically refused to negotiate with Local 2611 (R.p. 31, Ll. 32-34).

67. To the finding that Respondent's position questioning the bargaining authority of Local 2611 was specious (R.p. 31, Ll. 34-38).

68. To the conclusion that the Midwest Piping ruling does not apply to Respondent (R.p. 31, Ll. 38-62).

69. To the conclusion that the decertification petition was not filed timely (R.p. 32, Ll. 1-17).

70. To the conclusion that there was a contract bar to the decertification petition (R.p. 32, Ll. 19-43).

71. To the finding that Respondent knew that the labor contract was in effect (R.pp. 32-33, Ll. 45 to 8).

72. To the finding that Respondent committed an unfair labor practice by refusing to negotiate (R.p. 33, Ll. 8-10).

73. To the finding that the only reason for Respondent's position was the decertification petition (R.p. 33, Ll. 12-19).

74. To the finding that Local Union 2611 was prepared to negotiate (R.p. 33, Ll. 19-34).

75. To the finding that Respondent considered the labor contract in effect (R.p. 33, Ll. 36-50).

76. To the finding that Respondent gave notice of termination of the contract in bad faith; to bolster its legal position; to undermine Local 2611; and constituted a refusal to bargain (R.pp. 33-34, Ll. 52 to 18).

77. To the conclusion that Respondent committed unfair labor practices and converted the economic strike into an unfair labor practice strike (R.p. 34-35, Ll. 20 to 28).

78. To the conclusion that Respondent was not justified in refusing to negotiate (R.p. 35, Ll. 40-42).

79. To the conclusion that Respondent committed unfair labor practices (R.p. 35, Ll. 42-53).

80. To the finding that a breach of the labor contract was not an effective defense to Respondent (R.pp. 35-36, Ll. 55 to 50).

81. To the finding that the labor agreement did not bar strikes (R.pp. 36-37, Ll. 60-12).

82. To the conclusion that the wage article in the labor contract was severable (R.p. 37, Ll. 14-39).

83. To the conclusion that Respondent sought to justify a refusal to bargain upon the existence of a strike (R.p. 37, Ll. 41-54).

84. To the finding that Respondent dealt with Union through the Willamette Valley Lumber Operators Association after the strike (R.p. 37, Ll. 57-60).

85. To the finding that Respondent did not seriously present the issue of an unlawful strike (R.p. 37, Ll. 60-63).

86. To the finding that Local 2611 did not refuse to bargain at the meeting of January 8 (R.p. 38, Ll. 5-20).

87. To the finding that there were issues other than wages between Respondent and Local 2611 (R.p. 38, Ll. 22-31).

88. To the finding that Local 2611 did not abdicate its responsibility as bargaining agent; that it appointed the District Council as agent (R.pp. 38-39, Ll. 42 to 30).

89. To the finding that a union may seek reinstatement of employees when not authorized so to do (R.p. 39, Ll. 43-46).

90. To the conclusions that Respondent's abandonment of a second shift interfered with the "rights" of strikers (R.p. 39, Ll. 48 to R.p. 40, Ll. 49).

91. To the finding that Respondent discriminated unlawfully against strikers (R.p. 40, Ll. 51-57).

92. To each and every part of "V The Remedy" (R.p. 41, L. 12 to P. 42, L. 53).

93. To each and every part of "Conclusions of Law" (R.p. 42, L. 57 to p. 43, L. 43).

94. To each of the "Recommendations (R.p. 43, L. 45 to p. 44, L. 63).

95. To the "Recommended Order" (R.p. 45, Ll. 1-13).

It has not been considered necessary to take specific exceptions to the Trial Examiner's statements of law and interpretation of decisions of the Board and of the Courts.

Reference has not been made to the Transcript of Testimony and Exhibits as they will be precisely identified on the Brief supporting these Exceptions.

Respectfully submitted,

/s/ RICHARD R. MORRIS,
Attorney for Respondents.

United States of America
Before the National Labor Relations Board

Case No. 36-CA-633

GIUSTINA BROS. LUMBER CO. and LOCAL
2611, LUMBER AND¹ SAWMILL WORK-
ERS, AFL-CIO

DECISION AND ORDER

In September 9, 1955, Trial Examiner Maurice

¹ As the AFL and CIO merged subsequent to the hearing in this case, we are taking notice thereof and amending the name of the Charging Union accordingly.

M. Miller issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief, and the General Counsel filed a brief in support of the Intermediate Report.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions² and recommendations of the Trial Examiner.

As for the position taken by our dissenting colleague we disagree that the strikers should be found to have lost their employee status because of any failure on their part to comply with the provisions of Section 8 (d) of the Act. Insofar as any 8 (d) issue was raised, the Trial Examiner found that it

² As Chairman Leedom agrees with the Trial Examiner that the Respondent unlawfully refused to bargain with the Union by virtue of the participation of its representatives in the employees' July 28, 1954, "back-to-work" meeting, he deems it unnecessary to decide whether the evidence also supports the Trial Examiner's conclusion that the Respondent unlawfully participated in pre-arranging that meeting.

was limited to 8 (d) (4) and concluded that under the Board's decision in *Lion Oil Company*³ there was not merit in the contention. In its exceptions to the Board, the Respondent did not take issue with the Trial Examiner's so limiting the 8 (d) issue nor with his failure to consider that 8 (d) (1), (2), or (3) were involved in the case. Also, the Trial Examiner stated that the Respondent sought to justify its refusal to bargain because the employees were on strike. The Respondent excepted to this statement. Necessarily, the Respondent thereby completely negated any reliance upon Section 8 (d) (4). Consequently, we believe that any 8 (d) issue that may have been raised before the Trial Examiner, was thereafter abandoned by the Respondent and the issue is not now before the Board.

Order

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Giustina Bros. Lumber Co., Eugene, Oregon, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Threatening its employees with loss of their employee status for engaging in lawful strike activity;

(b) Refusing to bargain collectively upon request with Local 2611, Lumber and Sawmill Workers, AFL-CIO, as the exclusive bargaining representa-

³109 NLRB 680.

tive of all the employees at its sawmill and planing operations in Eugene, Oregon, and its log dump and pond at Springfield, Oregon, excluding office and professional employees, guards, and supervisors as defined in the Act, with respect to rates of pay, wages, hours of employment, or other conditions of employment;

(c) Discouraging membership in the above-named labor organization, or any other labor organization by refusing to reinstate any of its employees engaged in concerted activity as unfair labor practice strikers, or because of their union membership or activity, or by discriminating in any other manner with respect to their hire or employment tenure, or any term or condition of their employment;

(d) In any other manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form labor organizations, to join the above-named labor organization or any other labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid and protection, or to refrain from engaging in any or all of such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Local 2611, Lumber and Sawmill Workers, AFL-CIO, as the exclusive representative of all the employees in the above-described unit, with respect to grievances, wages, rates of pay, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement;

(b) Offer to employees who were on strike as of January 19, 1955, as set forth in an Appendix to the Intermediate Report, insofar as it may not already have done so, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, or place them on a preferential hiring list, and make them whole for any loss of pay or other incidents of the employment relationship which they may have suffered by reason of the Respondent's discrimination against them, in the manner set forth in the section of the Intermediate Report entitled "The Remedy" dismissing, if necessary, any persons hired on or after July 28, 1954, who were not in the Respondent's employ on that date;

(c) Preserve and make available to the National Labor Relations Board or its agents, upon request, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary for an analysis of the amounts of back pay due and the reinstatement rights of employees in accordance with the terms of this Order;

(d) Post at its places of business in Eugene and Springfield, Oregon, copies of the notice attached hereto as Appendix A.⁴ Copies of said notice, to be furnished by the Regional Director of the Nineteenth Region, as the agent of the Board, shall, after being duly signed by an authorized representative of the Respondent, be posted immediately upon receipt thereof and be maintained for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(e) Notify the Regional Director for the Nineteenth Region in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated, Washington, D. C. Aug. 21, 1956.

BOYD LEEDOM, Chairman

IVAR H. PETERSON, Member

STEPHEN S. BEAN, Member

[Seal] National Labor Relations Board.

Philip Ray Rodgers, Member, dissenting:

The facts of this case show, I believe, that the Respondent's employees did not comply with the requirements of Section 8 (d) of the Act before

⁴ If this Order is enforced by a United States Court of Appeals, the notice shall be amended by substituting for words "A Decision And Order" the words "Decree Of The United States Court Of Appeals Enforcing An Order."

engaging in strike action against the Respondent. They consequently lost their status as employees of the Respondent.⁵ Because the decision of my colleagues in this case is predicated upon their view that the strikers retained the status of employees, I am impelled to note my dissenting position.

⁵ In their opinion my colleagues assert that there is no 8 (d) issue before the Board in this case. I do not agree. In its amended answer, the Respondent asserted that the strike of its employees was an unfair labor practice within the meaning of the Act. In its brief to the Trial Examiner, the Respondent asserted that the strike was unlawful because it occurred during the contract term; and, in support of this statement, the Respondent paraphrased the language of Section 8 (d) (4). In my opinion, although the Respondent may not have raised the matter with technical nicety, its answer and brief, construed together, without question raised an 8 (d) (4) issue, and, I think, also raised an 8 (d) issue generally.

Nor do I agree with my colleagues' view that the Respondent subsequently abandoned any 8 (d) issue it had raised before the Trial Examiner. The Respondent specifically excepted "To the finding [of the Trial Examiner] that Respondent did not seriously present the issue of an unlawful strike." It also excepted "To the conclusion [of the Trial Examiner] that Respondent sought to justify a refusal to bargain upon the existence of a strike." And, in its brief to the Board, the Respondent argued that it considered the contract in full force and effect, and cited in support of this statement the court decision in the *Lion Oil* case (*Lion Oil Co. v. NLRB*, 221 F. 2d 231 (C. A.8)), which case squarely involved the construction of Section 8 (d) of the Act. Accordingly, although, again, the Respondent may not have proceeded with technical nicety, I think it is clear that it did not abandon its position as to Section 8 (d) of the Act.

The Union, Local Union No. 2611, Lumber and Sawmill Workers (affiliated with the Willamette Valley District Council of Lumber and Sawmill Workers), and the Respondent were parties to a collective bargaining agreement which became effective on May 8, 1953. Article XIII of the agreement provided:

This agreement terminates on 1 April, 1954, but shall automatically extend from year to year unless either party hereto shall have given written notice to the other party at least seventy-five (75) days preceding April 1 of any year of its intention to modify, revise, adjust, or terminate this agreement, specifying in such notice the provisions that it desires to modify, revise, or adjust, or its desire for termination.

The agreement also contained the following clause (Article VIII):

Wages shall continue subject to the right of either party to request a general wage change by giving the other party written notice of its desire for such general wage change. Negotiations shall commence within fifteen (15) days from the date the notice is received.

During the contract year 1953-1954, neither the Union nor the Respondent gave notice under Article XIII of an intention to modify, revise, adjust or terminate their agreement.

On February 10, 1954, however, the Union wrote to the Respondent as follows:

Please be advised that the Willamette Valley

District Council wishes to notify you that we wish to open negotiations for an increase in wages for all of your employees who are represented by our union.

We will appreciate the opportunity to discuss this matter with you or your representatives at an early date.

Pursuant to this letter, and a subsequent exchange of correspondence relating in part to the authority of the District Council to act on behalf of the Union, the parties engaged in bargaining with respect to the Union's requested wage increase. No agreement was reached.

On June 21, 1954, the Union, in furtherance of its wage demands, called a strike against the Respondent, and the Respondent's employees struck and picketed the Respondent's operations. This strike, clearly economic in origin, continued until January 19, 1955.

As neither the Union nor the Respondent gave notice under Article XIII of their agreement of intent to modify or terminate the agreement, it is clear, and the General Counsel has so conceded, that the agreement was automatically extended on April 1, 1954, for another year ending on April 1, 1955. It is also clear that the question of whether the Union satisfied the requirements of Section 8 (d) of the Act⁶ turns on the legal effect of the

⁶ Section 8 (d) of the Act provides in pertinent part: For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of

Union's letter of February 10, 1954, to the Respondent.

It would appear that the Union's letter of February 10, 1954, was intended as notification, under Article VIII of the agreement, of the Union's desire to bring about a general wage change. It is clear, however, that this letter failed to satisfy the requirements of Section 8 (d) (1), which specifies that notice of modification be served either sixty

the employees to meet at reasonable times and confer in good faith * * * : Provided, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

* * *

(4) continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

* * *

Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

days before the “expiration date” of a bargaining agreement, or, where the agreement does not contain an “expiration date,” sixty days before it is “proposed” to make the modification. Accordingly, if at the time the February 10 letter was written the “expiration date” of the agreement herein is taken to be April 1, 1954, then it is evident that the notice was given only some 51 days before such “expiration date,” and thus was not a timely notice. If, on the other hand, it is said that when the letter was written that agreement contained no “expiration date,” then the letter was defective as an 8 (d) (1) notice because it did not specify when the Union “proposed” to make the wage modification it was seeking.

It also is evident that the Union failed to satisfy the requirements of Section 8 (d) (4) before engaging in strike action against the Respondent. As indicated above, the parties’ agreement renewed itself on April 1, 1954. Consequently, when the Respondent’s employees went on strike on June 21, 1954, there was in effect a bargaining agreement having an “expiration date” of April 1, 1955.⁷ By

⁷In the recent *Lion Oil Company* case, the Board majority said: “The ‘expiration date’ of a contract containing an automatic renewal clause—i.e., an agreement subject to modification or termination upon notice at fixed annual periods—is the earliest date on which modification or termination could be effective. We think the same rule applies to a contract for a fixed term providing for a wage reopening at a prescribed period.” 109 NLRB 680, 684.

As Article VIII of the agreement herein did not provide for a “wage reopening at a prescribed per-

its terms Section 8 (d) (4) required the Respondent's employees to wait until such later date before striking, and their failure so to do caused them to lose their status as employees.

The strikers' loss of status as employees has rendered academic all other issues raised by the complaint against the Respondent. I would therefore dismiss that complaint, and would not issue an Order against the Respondent.

Dated, August 21, 1956, Washington, D. C.

PHILIP RAY RODGERS, Member
National Labor Relations Board.

APPENDIX A

Notice to All Employees Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not threaten our employees with loss of their employee status for engaging in lawful strike activity.

We Will Not discourage membership in Local 2611, Lumber and Sawmill Workers, AFL-CIO, or any other labor organization, by a refusal to rein-

iod"—that Article permitting a wage reopening at any time during the agreement's term—it cannot be said that under the majority view in the Lion Oil case, the 60-day waiting period contemplated by Section 8 (d) (4) is to be computed from the time that the Union gave its wage reopening notice on February 10, 1954.

state any of our employees because of their Union membership or activity, or by discrimination against them in any other manner with respect to their hire or employment tenure, or any term or condition of their employment.

We Will Not in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Local 2611, Lumber and Sawmill Workers, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own free choice, or to engage in other concerted activity for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

We Will bargain, collectively, upon request, with Local 2611, Lumber and Sawmill Workers, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below, with respect to rates of pay, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a written and signed agreement. The bargaining unit is:

All employees at our sawmill and planing operations in Eugene, Oregon, and the log dump and pond located at Springfield, Oregon, ex-

clusive of office and professional employees, guards, and supervisors.

We Will offer all of our employees who were on strike on January 19, 1955, immediate and full reinstatement to their former or substantially equivalent positions, displacing—if necessary—any new employees hired after July 28, 1954. If, after such displacement, there are not enough positions for all such employees, the available positions will be distributed among them in accordance with a seniority system or other nondiscriminatory arrangement heretofore applied in the conduct of our business. Any of our employees, previously on strike, for whom employment is not immediately available will be placed upon a preferential hiring list, priority on such list being determined by the seniority system or other nondiscriminatory practice heretofore applied in the conduct of our business. Thereafter, such employees will be offered reinstatement in accordance with the list, as positions become available, and before other persons are hired for such work. Such reinstatement will be without prejudice to their seniority and other rights and privileges.

We Will make our employees whole for any loss of pay each of them may have suffered as a result of our discriminatory refusal to rehire any of them on January 19, 1955, after their unconditional offer to return.

All of our employees are free to become or remain, or refrain from becoming or remaining members of Local 2611, Lumber and Sawmill Workers,

AFL-CIO, or any other labor organization, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act. We will not discriminate in regard to hire or tenure of employment, or any term or condition of employment, against any employee because of membership in or activity on behalf of any labor organization.

GIUSTINA BROS. LUMBER CO.

Dated

By

(Representative) (Title)

This notice must remain posted for 60 days from its date, and must not be altered, defaced, or covered by any other material.

[Title of Board and Cause.]

RESPONDENT'S MOTION FOR RECONSIDERATION

Respondent moves that the Board reconsider its Decision, and, after such reconsideration, dismiss the complaint herein.

The Decision of the majority of the members of the Board concludes:

“As for the position taken by our dissenting colleague we disagree that the strikers should be found to have lost their employee status because of any failure on their part to comply with the provisions of Section 8 (d) of the Act. Insofar as any 8 (d)

issue was raised, the Trial Examiner found that it was limited to 8 (d) (4) and concluded that under the Board's decision in *Lion Oil Company* there was no merit in the contention. In its exceptions to the Board, the Respondent did not take issue with the Trial Examiner's so limiting the 8 (d) issue nor with his failure to consider that 8 (d) (1), (2) or (3) were involved in the case. Also, the Trial Examiner stated that the Respondent sought to justify its refusal to bargain because the employees were on strike. The Respondent excepted to this statement. Necessarily, the Respondent thereby completely negated any reliance upon Section 8 (d) (4). Consequently, we believe that any 8 (d) issue that may have been raised before the Trial Examiner, was thereafter abandoned by the Respondent and the issue is not now before the Board."

We respectfully submit that the majority erred in drawing its conclusions. The majority holds, briefly, that Respondent did not raise the issue of Section 8 (d), but if Respondent did so, Respondent abandoned its position.

The record is to the contrary. Throughout the entire proceeding Respondent has placed Section 8 (d) in issue. In its answer Respondent alleged that the strike was an unfair labor practice strike. Amended Answer, page 2. Respondent by this allegation could only be charging a violation of Section 8 (d). What else could this allegation refer to? To our knowledge a Union can commit an

unfair labor practice strike only by its failure to meet the requirements of Section 8 (d).

In Respondent's Brief to the Trial Examiner, Respondent maintained its position. Respondent wrote:

"As Respondent views the amended complaint in the light of the testimony, the following issues are presented:

5. Did the Union fail to bargain in good faith, as required by the Act, by striking before the termination of the contract?"

and again:

"Apart from these considerations, the Act defining the duty to bargain in good faith requires that the party proposing modifications continue to work without stoppage for 60 days or termination of the contract, whichever later occurs.

It is undisputed that the strike occurred while the contract was in effect. A strike under these conditions is an unfair labor practice.

The strike, accordingly, relieved Respondent of any obligation to deal with Local 2611."

Respondent, as a matter of good faith, advised the Trial Examiner that it rested its defense in part upon the fact that the strike was an unfair labor practice one by the Union; but, in view of the Board's position with reference to the Lion Oil case, did not labor the point. In short, Respondent was preserving the 8 (d) violation for the record.

The Trial Examiner stated parenthetically (R.p. 37, Ll. 41-53):

“The Respondent’s answer also contains a contention, by way of affirmative defense, that the Union’s strike action constituted an unfair labor practice—within the meaning of the statute—apart from its character as a contractual breach; the firm argues, apparently, that the Union ought to be held responsible for a refusal to bargain in good faith because it resorted to strike action prior to the expiration date of the agreement with respect to which it desired to negotiate modifications. See Section 8 (d) (4) of the Act, as amended. It is contended that the strike, therefore, relieved the Respondent of any obligation to deal with the organization. I would find the argument without merit. *Lion Oil Company* 109 NLRB 680, 681-686, 34 LRRM 1410, set aside 221 F. 2d 231 (C.A. 8), pet. for cert. filed July 15, 1955.”

This is the only reference we find in the Report of the Examiner to this issue. The Examiner attempts to summarize Respondent’s argument and qualifies his remarks by the limitation that this is “apparently” Respondent’s argument.

We submit that a parenthetical statement, which is not made as one of fact but amounts at most to a passing comment, is not one of fact as to which exception must be taken. But giving the reference by the Examiner the dignity of a finding, Respondent properly took exception to it. The statement of the Trial Examiner is found on page 37, lines 41 through 53. Respondent’s Exceptions 83, 84 and 85 are as follows:

“83. To the conclusion that Respondent sought

to justify a refusal to bargain upon the existence of a strike (R.p. 37, Ll. 41-54).

“84. To the finding that Respondent dealt with Union through the Willamette Valley Lumber Operators Association after the strike. (R.p. 37, Ll. 57-60).

“85. To the finding that Respondent did not seriously present the issue of an unlawful strike (R.p. 38, Ll. 5-20).”

These exceptions encompass the complete statement of the Trial Examiner.

The majority concludes that the Exception No. 83, was an abandonment by Respondent of the Section 8 (d) issue. Examination of the record destroys this conclusion. The Examiner said: “It is contended that the strike, therefore, relieved Respondent of any obligation to deal with the organization.”

Certainly Respondent took exception to that conclusion. It has been long recognized that the duty of an employer to bargain collectively continues after a strike has been called. A strike per se does not relieve an employer of the obligation to bargain. The Examiner imputed to Respondent a fallacious legal contention. Respondent had not made such a contention. Naturally Respondent excepted to the misleading and erroneous position attributed to it by the Trial Examiner. That exception taken to a contention mistakenly ascribed to Respondent is not and cannot be an abandonment of the 8 (d) issue.

In brief, the majority concluded that an issue

raised in the pleadings, submitted to the Trial Examiner and preserved by exception to the reference of the Examiner to it, is waived because the Brief of Respondent does not contain elaborate argument supporting it. No rule of the Board requires a Respondent to file a brief supporting its exceptions. No rule requires a party to submit its affirmative case. Respondent is not required to submit findings of fact and conclusions of law to support its position.

The rules of the Board, (Sec. 102, 46 (b)), provide that no matter not included in a statement of exceptions may thereafter be urged before the Board, or in any further proceeding. This rule is in direct conflict with the Act itself and so is invalid. Section 10 (e) of the Act provides: "No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the Court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances." The Board rule clearly conflicts with the statute. The statute, of course, controls.

The Board Rules, Sec. 102.46, allow 20 days to file exceptions and supporting Brief with the Board.

In this case the Intermediate Report and Recommended Order consists of forty-four pages of sixty lines each. The transcript is made up of 417 pages. In addition, 20 exhibits were offered. The rules require "precise citation of page and line" of the record. The Examiner does not support his statements and conclusions by appropriate refer-

ences to the record. The burden imposed upon a party excepting to the report is extremely heavy; perhaps too onerous to be carried. Note this example; the Examiner said (R.p. 12, Ll. 21-27):

“(Hughes testified that he had no recollection of any such exchange. Three of the General Counsel’s witnesses, however, attributed the inquiry noted to him, in words or substance. And upon the entire record, indeed, such an inquiry would seem to be consistent with his character and the general tenor of his remarks, as revealed in the stipulation previously noted. I find that he raised the question noted, and received an affirmative reply.)”

This short statement of seven lines requires the examination of (1) all of the testimony of Hughes; (2) all of the testimony of all of the witnesses called by the General Counsel; all of the record and (4) the stipulation of the parties.

Every line of the Report and Recommended Order must be examined with the same minute diligence.

The excepting party then must decide whether to support every exception in his brief or restrict it to a chosen few of the subjects covered. If he should decide to cover every detail, he runs the risk of submerging issues in a mass of detail. The Brief would be of outrageous lengths; it would impose impossible burdens upon the Board.

This Respondent chose to attempt to keep its Brief within reasonable lengths. Even so, its Brief

contained sixty-three pages, too many in our opinion for the most effective presentation of its case.

Under these circumstances a failure to include in the Brief argument supporting a particular exception or exceptions is not an abandonment of the exception or of issues otherwise raised.

The Decision of the Majority raises other serious questions of substance. The Board acts to protect, to advance the public interest, as distinguished from the enforcement of private rights.

It is apparent from the opinion of the majority that the Respondent did not commit an unfair labor practice. The majority finds Respondent guilty because it concluded Respondent waived its defense. But a public right cannot be waived by a party litigant.

The public interest requires that an employer be given justice, although represented by inept counsel, as well as an employee who has settled his claim.

The record establishes that the Union and its members did not comply with Section 8 (d); that at the inception of this proceeding Respondent served notice that it relied upon Section 8 (d) as one defense to the charges against it; that while it did not aggressively prosecute the defense, it did not abandon it.

We submit further that, if it be assumed that Respondent did not raise the issue of non-compliance with Section 8 (d), the Board has raised the issue and Respondent is entitled to the benefit of it. The rule that a party can raise as issues only those matters which exceptions to the intermediate

report present cannot be applied to deprive a party of error appearing in the Decision of the Board.

The Board is charged with the responsibility to administer the rights of the public, irrespective of the position of the parties. Section 10 (d) of the Act empowers the Board to correct any decision made by it before a transcript of the record shall be filed in Court. The Board has accepted this responsibility, Rule 102.49.

The Board has not been reluctant to consider issues not raised by exceptions to the Intermediate Report. See *Item Co.* 108 NLRB 1634.

The result of the decision of the majority is that the members of the Union which violated the Act are rewarded by a reinstatement order with back pay. An award of back pay by the Board is not automatic; it is not to be applied mechanically in all cases. It is only to be ordered in those instances where it will effectuate the purposes of the Act, Section 10 (c). The order of the Board, in this instance, is clearly violative of sound policy. Rewards to those who violate the act do not effectuate its purpose. To the contrary, such law breakers have forfeited those benefits.

The Board may well consider the opinion of the Court of Appeals for the Third Circuit in *N.L.R.B. vs. Spiewak & Son*, 179, Fed. 2d. 695. The Court said:

“The exceptions to the report do not specifically mention the exclusion of the second reason, but are broad enough to include this within their scope. The record squarely presents that problem for our

consideration. We do not think it comes within the language of Section 10 (e) of the Act reading: "No objection not urged before the Board, its member, agent or agency, shall be considered by the court * * *." Even if it were judged to be under that section, the exception reads: "* * * unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances." The Spiewak reasons for denying reemployment to the six were developed on the Board's own cross-examination. The full significance of that testimony was apparently lost sight of by both sides in the dispute over whether the employer could rely on the 1944 contract for the refusal to take back the six. They failed to see the trees for the forest. The fact that respondents did not rehire the six because of employee opposition is vital to this branch of the litigation, and, in fairness to all concerned, cannot be disregarded."

* * * * *

Since the exceptions were filed by Respondent, the Board has announced its decisions in two cases which have a material bearing upon the issues.

In *Miller Shingle Co.*, 114 N.L.R.B. No. 187, and *Jones and Anderson Logging Company, Inc.*, 114 N.L.R.B. No. 186, the Board ruled that the employers in the Northwest, participating in "industry" negotiations constitute a multi-employer bargaining unit. The Trial Examiner in the instant case found (R.p. 8, Ll. 17-35):

"Various reference in the record suggest that the negotiations thus initiated by the Association

and the District Council, with respect to the wage issue, were part of a larger series involving other operator associations, other organizational units of the Lumber and Sawmill Workers, A.F.L. the International Woodworkers of America, CIO, and various employers whose employees were represented by one or another of these 'rival' labor organizations."

"(At the time, I find, it was a matter of common knowledge in the Pacific Northwest that wage issues in the lumber trade were being negotiated on an 'industry-wide' basis, and that practically every employer in the trade, privy to a labor agreement with an AFL or CIO organization, had been confronted with a wage demand. These negotiations were extensively discussed, in the local press and elsewhere. I find it appropriate, therefore, to take official notice of the fact that the Respondent's indirect involvement with the Union—as previously indicated—constituted a part, only, of the larger series of negotiations, to all intents and purposes 'industry-wide' in scope."

and again (R.p. 9, Ll. 49-53):

"Thereafter, on the 17th of June, representatives of the District Council and the Association met to renew negotiations with respect to the wage issue. Hughes, as a member of the Association committee, was present. The record is silent, however, with respect to the discussion which then eventuated." * * * * *

“(There were additional negotiations, I find, between the Council and the Association committee on July 13 and August 4, 1954. Despite the protestations of President Giustina as to the ease with which he could terminate the Association’s status as his representative, the record establishes that Hughes sat as a member of the Association’s committee on each of the occasions noted.)”

It follows, inescapably, that at all meetings after the strike started between Respondent and Union representatives, Respondent cannot successfully be charged with a refusal to bargain, because the employes of Respondent alone, a member of a multi-employer unit, did not constitute an appropriate bargaining unit.

Respectfully submitted,

/s/ RICHARD R. MORRIS.

[Title of Board and Cause.]

ORDER DENYING MOTION

On August 21, 1956, the Board issued a Decision and Order ¹ in the above-entitled proceeding. Thereafter, on September 4, 1956, counsel for the Respondent filed a Motion for Reconsideration and supporting brief. On September 20, 1956, counsel for the General Counsel filed a response thereto. On September 21, 1956, the charging party filed a brief in opposition to the motion for reconsidera-

¹ 116 NLRB No. 89.

tion. The Board having duly considered the matter,

It Is Hereby Ordered that the aforesaid motion be, and it hereby is, denied on the grounds that the contentions raised in respect to Section 8 (d) were previously considered by the Board and that the new matters presented are without merit.

Dated, Washington, D. C., September 26, 1956.

By direction of the Board:

FRANK M. KLEILER,
Executive Secretary.

[Endorsed]: No. 15625. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Giustina Bros. Lumber Co., Respondent. Transcript of the Record. Petition to Enforce An Order of the National Labor Relations Board.

Filed: September 20, 1957.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In The United States Court of Appeals
For The Ninth Circuit

No. 15625

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

GIUSTINA BROS. LUMBER CO.,
Respondent.

PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR RE-
LATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Secs. 151, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondent, Giustina Bros. Lumber Co., Eugene, Oregon, its officers, agents, successors and assigns. The proceeding resulting in said order is known upon the records of the Board as "Giustina Bros. Lumber Co. and Local 2611, Lumber and Sawmill Workers, AFL-CIO," Case No. 36-CA-633.

In support of this petition the Board respectfully shows:

(1) Respondent is an Oregon corporation en-

gaged in business in the State of Oregon, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on August 21, 1956, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent, Giustina Bros. Lumber Co., Eugene, Oregon, its officers, agents, successors and assigns. On the same date the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, and pursuant to Rule 34 (7) (a) of this Court, the Board is certifying and filing with this Court a certified list of all documents, transcripts of testimony, exhibits and other material comprising the entire record of the proceeding before the Board upon which the said Order was entered, which includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein

and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing in whole said Order of the Board, and requiring Respondent, its officers, agents, successors and assigns to comply therewith.

Dated at Washington, D. C. this 10th day of July, 1957.

/s/ STEPHEN LEONARD,
Associate General Counsel.

[Endorsed]: Filed July 15, 1957. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

ANSWER TO PETITION FOR ENFORCE-
MENT OF ORDER OF THE NATIONAL
LABOR RELATIONS BOARD

To The Honorable, The Judges of the United
States Court of Appeals for the Ninth Circuit:

Giustina Bros. Lumber Co., a corporation duly organized and existing under the laws of the State of Oregon, answers the petition presented to this Court for the enforcement of a certain Order issued by the National Labor Relations Board, herein some times called the Board, against Giustina Bros. Lumber Co. The proceeding in which this Order was issued by the Board is known upon its records as "Giustina Bros. Lumber Co. and Local No. 2611,

Lumber & Sawmill Workers, AFL-CIO," being case number 36-CA-633.

In answer to the Petition of the Board to this Honorable Court, Respondent respectfully:

I.

Admits the allegations of Paragraph I of said petition but denies it committed any unfair labor practice.

II.

Admits that on August 21, 1956, the Board issued its Order directed at Respondent; that a copy thereof was served upon Respondent, and alleges it has no knowledge or information sufficient to form a belief as to whether due proceedings were had before the Board on said matter and therefore denies said allegations.

III.

Denies any knowledge or information sufficient to form a belief as to the matters alleged in Paragraph III.

In further answer to the said Petition of the Board, Respondent alleges that the findings of the Board as to facts are not supported by evidence and more particularly alleges the evidence does not support the following findings of the Board in said matter.

I.

The finding that Respondent violated its obligation to deal with Local 2611 as the exclusive bargaining agent of its employees; and interfered with,

restrained and coerced its employees in the exercise of their statutory rights.

II.

The finding that the strike was converted from an economic strike to an unfair labor practice strike.

III.

The finding that the letter from Respondent to the strikers constituted a threat to the strikers possessing coercive impact.

IV.

The finding that Respondent terminated its contract with the Union to impair the Union's position as representative of the employees; and that such termination was a failure to bargain in good faith and interfered with, restrained and coerced Respondent's employees.

V.

The finding that Respondent prolonged the strike.

VI.

The finding that Union did not breach the contract with Respondent.

VII.

The finding that Local No. 2611 attempted to bargain in good faith.

VIII.

The finding that Respondent discriminated against the strikers to discourage Union member-

ship and concerted activities for mutual aid and protection; and interfered with, restrained and coerced the employees in the exercise of their rights.

IX.

The finding that the strikers did not forfeit their rights as employees.

X.

The finding that Respondent waived its right to raise the question that the strikers forfeited their employment rights by the illegal strike.

XI.

The finding that the strikers were entitled to reinstatement.

XII.

The finding that the strikers were entitled to an award of back pay.

XIII.

The finding that the second shift employees were entitled to reinstatement and employment rights.

In further answer to the said Petition, Respondent alleges that the Board acted without and in excess of its power in making and entering its conclusions of law and order in this matter by reason of lack of evidence on the matters hereinbefore set forth.

Respondent alleges that the objections set forth herein have been urged before the Board, its member, agent or agency.

Wherefore Respondent prays this Honorable

Court that it deny enforcement of the Order of the Board in whole, or, if such prayer be denied, that it deny enforcement of the Order of the Board in such part as it is not supported by evidence as herein set forth, and insofar as denial, relieve Respondent, its officers, agents and representatives of any necessity to comply therewith.

Dated this 31st day of July, 1957.

GIUSTINA BROS. LUMBER CO.,

/s/ By EHRMAN O. GIUSTINA,

/s/ RICHARD R. MORRIS,

Attorney for Respondent.

Duly Verified.

[Endorsed]: Filed July 31, 1957. Paul P. O'Brien,
Clerk.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH
PETITIONER INTENDS TO RELY

In this proceeding, petitioner, National Labor Relations Board, will urge and rely upon the following points:

1. The Board properly found that respondent interfered with, restrained and coerced its employees, and refused to bargain with the majority representative of its employees in an appropriate unit, thereby violating Section 8 (a) (1) and (5) of the Act.

2. The Board properly found that respondent's

rejection of the unconditional application for reinstatement made by the unfair labor strikers constituted discrimination violative of Section 8 (a) (3) and (1) of the Act.

Dated at Washington, D. C., this 16th day of Aug., 1957.

/s/ STEPHEN LEONARD,
Associate General Counsel, National Labor Relations Board.

[Endorsed]: Filed Aug. 19, 1957. Paul P. O'Brien, Clerk.

Before the National Labor Relations Board
Nineteenth Region

Case No. 36-CA-633

In the Matter of: Giustina Bros. Lumber Co. and
Local 2611, Lumber and Sawmill Workers,
AFL.

TRANSCRIPT OF PROCEEDINGS

Rooms 315 and 334, Erb Memorial Student Union Building, Eugene, Oregon. Monday, May 9, 1955.

Pursuant to notice, the above-entitled matter came on for hearing at 10 o'clock, a.m.

Before: Maurice M. Miller, Esq., Trial Examiner.

Appearances: Patrick H. Walker, Esq., 407 U. S. Court House, Seattle, Washington, appearing on behalf of General Counsel, National Labor Relations Board. Donald S. Richardson, Esq., 1003 Corbett Building, Portland, Oregon, appearing on be-

half of Local 2611, Lumber and Sawmill Workers, AFL, the Charging Party. Richard R. Morris, Esq., Failing Building, Portland, Oregon, appearing on behalf of Giustina Bros. Lumber Co., the Respondent. [1]*

Proceedings

* * * * *

Mr. Walker: What has been referred to as Appendix G in Paragraph XV on Page 10 of General Counsel's 2 is one and the same as the instrument marked Exhibit A attached to the amended complaint, which is identified as General Counsel's Exhibit 1-M, and, for that reason, after drafting General Counsel's Exhibit 2, you will note that there is no Appendix G attached to General Counsel's Exhibit 2.

Mr. Morris: Mr. Examiner, for the sake of clarity, I would suggest that Paragraph XV then in the stipulation be amended to recite that the copy is attached to the amended complaint as Exhibit A, rather than referring to the missing Exhibit G. It might simplify it for someone else who might have to read this.

Trial Examiner: Does that suggestion meet with the approval of the General Counsel and you, Mr. Richardson?

Mr. Walker: That's agreeable.

Mr. Richardson: Yes.

Trial Examiner: Very well, on that representation, I will suggest, since all parties concur, that

* Page numbers appearing at top of page of Reporter's Original Transcript of Record.

General Counsel's Exhibit 2 in evidence be amended in Paragraph XV thereof, by striking the words in the third line thereof, appearing after the word "appended", specifically striking the words "hereto and marked Appendix G", and substituting for that phrase the words, "to the amended complaint in this case as Exhibit A", so that [23] the sentence, in which the amendment now suggested appears, would then read as follows:

"On or about August 5, 1954, by a letter bearing that date, a copy of which is appended to the amended complaint as Exhibit A, was sent by the Respondent by mail * * *," et cetera.

Does that meet with the approval of all parties?

Mr. Morris: Satisfactory.

Mr. Richardson: Yes.

Mr. Walker: That's agreeable.

Trial Examiner: Very well, the record will show that it is so amended. [24]

* * * * *

ELDON KRAAL

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Walker): Your name is Eldon Kraal? A. That's right.

Q. Spelled K-r-a-a-l, is that correct?

A. Correct.

Q. And, Mr. Kraal, what is your—rather, by whom are you employed now? [25]

(Testimony of Eldon Kraal.)

A. By the Willamette Valley District Council of Lumber and Sawmill Workers, AFL.

Q. And what is your position with them?

A. I'm Executive Secretary of the Council.

Q. How long have you held the position of Executive Secretary to the District Council?

A. Since 1947.

Q. And do you know whether or not Local 2611 in the year 1954 was a member of the Willamette Valley District Council?

A. The local was a member of the Council.

Q. And in addition to Local 2611, were there other locals members of the Council in the year 1954?

A. I didn't quite understand you.

Q. In addition to Local 2611, were there any other locals who were members of the Council in the year 1954?

A. Yes, there was.

Q. Now, the record shows that on or about February 10, you, as Secretary to the Council, sent a letter to Giustina Brothers Lumber Company, and a copy of that letter appears as Appendix B to General Counsel's Exhibit 2, which I now show you.

Was a like or a similar letter sent to any other employers on or about the same time, which employers are operating in the Willamette Valley area?

A. Yes. [26]

* * * * *

Q. Now, for the entire period of time that you have been Secretary of the Willamette Valley Dis-

(Testimony of Eldon Kraal.)

trict Council, do you know whether or not that method of collective bargaining has occurred between the Council and the various employers who have contracts with the various locals affiliated with the Council?

A. Well, traditionally, since my term of office as Secretary of the Council, negotiations have been carried on between [30] committees representing the District Council and committees representing the employers, who, as far as my knowledge goes, the employers' committees in many cases were chosen through their employers association, and there was also employers within this District who had contracts with various local unions and also with Local Union 2611, who did their own negotiations. In other words, the employers in some cases negotiated with the Council independently of the association.

Q. And by "independently", do you mean directly with the association?

A. With, yes, directly.

Q. Rather than—with the Council, rather than through the association? A. Yes.

Q. Now, what subject matters have been negotiated between the employers who are represented by the committees of the association and the committees of the Council?

A. Well, do you mean in all the years?

Q. In all of the years.

A. That I've been in an official capacity?

Q. Yes, sir.

(Testimony of Eldon Kraal.)

A. Well, usually for the most part we have negotiated rates of pay, pay raises, and also such things as vacation pay, hours of labor clauses, but not in recent years. We've negotiated nothing in recent years except matters of wages, wage rates.

Q. Now, in recent years, how far back do you mean? [31]

A. Well, I would almost have to check the record to get right down to details, but I'd say within the last three or four years there's been no negotiations except on matters of wages.

* * * * *

Q. (By Mr. Walker): No negotiations on any subject?

A. We have negotiated no matters with any employers in the last several years except matters of wages.

Q. All right. Now, the record shows that there were negotiations on certain dates from April to August in 1954 between the Council representatives and representatives of the association. What subject matters in the year 1954 in those negotiations were discussed with the representatives of the Council and the representatives of the association?

A. The matter of wage increases.

Q. Anything else?

A. Nothing that I know of.

Q. Calling your attention to Article XIII of Appendix A to General Counsel's Exhibit 2, can you state whether or not the Council on behalf of any locals in 1954 acted under Article XIII?

(Testimony of Eldon Kraal.)

A. The Council did not. [32]

Mr. Morris: May my continuing objection apply?

Trial Examiner: To the extent that the question may possibly elicit information with respect to the Council's relationship to employers other than Giustina Brothers, I will consider your continuing objection is still applicable. For the record, the objection is overruled.

Q. (By Mr. Walker): Do you know whether or not in the year 1954 Local 2611 took any action under Article XIII with respect to Giustina Brothers? A. None that I'm aware of.

Q. Do you know whether or not any of the locals affiliated with the District Council in 1954 took any action under Article XIII?

A. I'm not aware of any cases of that.

Q. In your capacity, if any had occurred, would you know of it?

A. Perhaps so, but not necessarily in all cases.

Q. In the negotiations between representatives of the association and representatives of the Council on the mentioned dates between April and August, 1954, was any subject, other than or in addition to wages, discussed between those representatives? A. No, sir.

Q. Mr. Kraal, would you turn to Appendix F attached to General Counsel's Exhibit 2? At any time since April 13th, 1954, the date of that letter, have you received any letter from Giustina [33] or from the association revoking the authorization of the association? A. No, sir. [34]

(Testimony of Eldon Kraal.)

Cross Examination * * * * *

Q. (By Mr. Morris): Well, are you two the negotiating committee of the Willamette Valley District Council? A. Am I what?

Q. Are you and Mr. Howden the negotiating [39] committee of the Willamette Valley District Council? A. Not necessarily.

Q. Are you, or aren't you?

* * * * *

The Witness: We were not supposed to. Our committee of the Council, we were not even requested by the company to be present. I was there as representing the Council, the District Council, to assist the local union. Mr. Howden is the Business Agent of the local union. Therefore, we were not acting, either one of us, in the capacity of the negotiating committee for the Willamette Valley District Council. I can't answer it any plainer than that. [40]

* * * * *

SAM E. HUGHES

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Walker): Your name is Sam E. Hughes? A. Yes.

Q. And, Mr. Hughes, by whom are you employed?

A. Giustina Brothers Lumber Company.

Q. In what capacity?

(Testimony of Sam E. Hughes.)

A. Labor Relations Director.

Q. How long have you held that position?

A. I've been employed by the company since 1951. [41]

* * * * *

Q. All right. On July 28th, in the evening, were you at the machine shop located on the premises of Giustina Lumber Company?

A. I was there during a portion of the evening.

Q. Were you present in the shop of the company on that date of July 28th at a time when approximately 22 individuals were assembled there in the shop? A. Yes.

Mr. Morris: Is that the same meeting referred to in General Counsel's 2?

Mr. Walker: That's right.

Q. (By Mr. Walker): Now, what time did you arrive at the shop?

A. It was rather late, Mr. Walker. I would say after 10 o'clock.

Q. Well, about when with respect to 10 o'clock?

A. I would be inclined to say somewhere [52] between 10:30 and 10:45, although that is an estimate at this time.

Q. Was Mr. Nat Giustina in the shop that night of July 28th where there was an assemblage of approximately 22 individuals? A. Yes, he was.

Q. And he was there at the time the 22 individuals were assembled, is that right? Oh, of course, the stipulation shows that.

Mr. Morris: I think we stipulated that.

(Testimony of Sam E. Hughes.)

Q. (By Mr. Walker): What time did Mr. Nat Giustina arrive at the shop?

A. Well, approximately the same time I did, Mr. Walker.

Q. How did you get to the shop that night?

A. By automobile.

Q. Whose? A. Mr. Giustina's.

Q. Which one?

A. Mr. Nat Giustina's, as I recall. [53]

* * * * *

Q. (By Mr. Walker): Mr. Hughes, with respect to the reference in Paragraph 13 of General Counsel's 2, and particularly on Page 4, Line 7 of the second paragraph—second full paragraph, the sentence appears:

“The shop had been used in the past for employee meetings.”

Q. Do you find that?

A. Yes.

Q. Now, had the shop in the past or at any time prior to July 28th, 1954, ever been used for general employee meetings?

A. It is my understanding that it had, Mr. Walker.

Q. Hadn't the shop only been used in the past for meetings of employees for schooling them on grading?

A. Not as far as I know, no; other things.

Q. General assemblies of plant employees?

A. That is my understanding.

Q. Now, what is the source of your information?

(Testimony of Sam E. Hughes.)

A. The common knowledge of the employees at the plant, as well as the general management.

Q. At any time since 1951, since you have been in the employ of the company, have there ever been general employee meetings in the shop?

A. None in which I have participated. However, I understand there has been at least one that I recall to mind.

Q. And general employee meetings for purposes other than conducting a grading school? [60]

A. Yes. [61]

* * * * *

Q. (By Mr. Walker): Well, in the past, has the company called the employees of the company to assemble in the shop for company meetings additional to conducting a grading school?

A. It is my understanding they have.

Q. And when, prior to July 28th, 1954, was the last meeting?

A. I would be unable to state a specific date. I was not in attendance at the meeting which I understand was held.

Q. Was that a meeting of all employees in the employ of the company at that time?

A. A meeting of all who wished to attend.

Q. Was the meeting of those who wished to attend for a limited purpose?

A. Do you mean that—

Mr. Morris: I object to that question. That's asking this witness to testify as to the purpose of other people who might attend a meeting.

(Testimony of Sam E. Hughes.)

Q. (By Mr. Walker): Do you know why the meeting was called?

A. One of the subjects——

Mr. Morris: Answer the question.

The Witness: Yes, I believe so.

Q. (By Mr. Walker): All right, what was it?

A. One subject that was discussed one time was a welfare fund.

Q. A discussion of the welfare fund affecting employees? A. Yes.

Q. And was it a discussion between representatives of management and the employees? [62]

A. Employees only, as far as I know. [63]

* * * * *

Q. (By Mr. Walker): And, lastly, Mr. Hughes, did you ascertain the date upon which the company received through the mails from the Portland Sub-regional Office a copy of the petition filed by Glenn Winey, which has been received in the record as General Counsel's Exhibit 3?

A. The notification bears the date stamp of 27 August 1954. [78]

* * * * *

LELAND JAMES HOWDEN

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Walker): Will you state your name, please? A. Leland James Howden.

(Testimony of Leland James Howden.)

Q. And where do you reside?

A. 480 Horn Lane, Eugene, Oregon.

Q. By whom are you employed?

A. Lumber and Sawmill Workers Local Union No. 2611.

Q. In what capacity?

A. Financial Secretary and Business Agent.

Q. And how long have you held the position of Secretary of that local? A. About 1948.

Q. And how long have you held the position of Business Agent with the local?

A. Since 1951. [85]

* * * * *

Q. Now, in the files and records of the local, when they were delivered over to you by your predecessor, did you learn whether or not there was in existence an agreement which had been entered into between the Giustina Company and the local in 1943? A. Yes, sir.

Q. And was that an agreement dated March 31, 1943?

A. I'm not certain of the date. [86]

Q. All right. If you would refer to Appendix A to General Counsel's Exhibit 2, and particularly the first page thereof, the second line, does that refresh your recollection as to the date on which the agreement came into being?

A. It was, I make sure of that.

Q. Now, following the entry of that agreement on March 31, 1943, how long did that remain in effect unchanged?

(Testimony of Leland James Howden.)

A. Until November something in 1949—the 9th of November, I believe.

Q. Well, again, if you'll refer to Appendix A——

A. The 8th of November.

Q. The 3rd, isn't it?

A. The 3rd? I ought to have glasses.

Trial Examiner: Let the record show that the witness has referred Exhibit A to me, and the Examiner, with the aid of glasses, reads it to read the 3rd day of November, 1949.

The Witness: I need glasses.

Q. (By Mr. Walker): Did you participate in your capacity in any negotiations which led up to the revision of the March 31, 1943, agreement into the November 3rd, 1949, agreement?

A. I did.

Q. When did those negotiations occur, if you can recall, with respect to the date when the revised agreement was executed?

A. I think I must have been there the evening of November 3rd. [87]

Q. I believe you misunderstand my question. When did the negotiations occur with respect to the date when the agreement was reached?

A. As far as my memory goes, there was only one meeting.

Q. How did those negotiations come about?

A. I believe it must have been mutually agreed to change the contract and include it all in one.

Q. Now, did the agreement then remain in ef-

(Testimony of Leland James Howden.)

fect and unchanged until a later date? A. Yes.

Q. And when last was—strike that.

The record shows that Appendix A came into being on May 8th, 1953. Now, between November 3, 1949, and May 8th, 1953, were there any negotiations between the—strike that—did any negotiations occur pursuant to Article VIII of the agreement? A. Yes.

Q. And when did those negotiations pursuant to Article VIII occur?

A. During late 1949 and early 1950, again in August and September of 1950, 1951—I don't recall the time, it must have been in the spring.

Q. All right, now—

A. Twice in the spring of '51.

Q. With respect to the negotiations on wages [88] that occurred in early 1950, who conducted those negotiations?

A. To my knowledge, the District Council and the Operators Association.

Q. And the negotiations that occurred in September, 1950, who conducted those negotiations?

A. The Council, and the Operators Association.

Q. And in the spring of 1951, who conducted the negotiations?

A. By the Council and the Operators Association, and there was two different, if I remember correctly, two different settlements.

Q. Now, in 1952, was any action taken pursuant to Article VIII of the agreement? A. Yes.

Q. And what was that?

(Testimony of Leland James Howden.)

A. At that meeting, a 12 and a half cent settlement between the—was recommended by the Operators Association and the District Council back to the individual operators and the local unions for a settlement of 12 and one-half cents.

Q. And when was that in 1952?

A. Settlement was some time in May, I believe.

Q. Now, referring to Article XIII of Appendix A to General Counsel's 2, between November 3, 1949, and May 8, 1953, did the local take any action at any time pursuant to that article?

A. May I have the question again?

Mr. Walker: Will you read the question, [89] please?

(Question read.)

The Witness: In the old contract, it was Article XIV, Terminations, the old contract. So, by using it, in January of 1953, the local did ask to revise Article I, III, IV, V, VI and VII of the then existing contract.

Q. (By Mr. Walker): January of what year was that? A. '53.

Q. All right, and upon whom was that notice served?

A. Upon Giustina Brothers Lumber Company.

Q. Thereafter, did the company take any action under the provisions of Article XIII?

A. Yes, sir.

Q. And what was that?

A. They served notice that they were opening on Article II, IX, X, XI, XII, XIII and XIV of

(Testimony of Leland James Howden.)

the contract then in existence, making everything open for discussion except wages.

Q. After the exchange of those notices, did negotiations occur? A. They did.

Q. And who conducted your negotiations for the local? A. I did.

Q. And who conducted negotiations for the employer? A. Sam E. Hughes.

Q. Did the association represent the employer in those negotiations? A. No. [90]

Q. Did the Council represent the union in those negotiations? A. No.

Q. As a result of those negotiations then, the instrument which is marked as Appendix A, the revision of May 8th, 1953, came into being?

A. Yes, sir.

Q. Now, during those negotiations between the local and the company, what contentions, as you recall, were advanced by the employer to bring about the revision? A. Revisions of what?

Q. Well, the revisions which led up to the completed agreement?

A. Well, we made a lot of them. We was the ones that originally opened the contract.

Q. All right.

A. We wanted some changes.

Q. Was there any discussion on Article II, and that Article II is the plant committee article?

A. And grievance procedures.

Q. And was there any discussions on Article IX, the strike and lockout provisions?

(Testimony of Leland James Howden.)

A. Yes, sir.

Q. Who advanced contentions relative to the agreement—strike that.

Who advanced contentions which brought about [91] the adoption of those two clauses?

A. The company did.

Q. And will you relate your recollection of what the contentions were as advanced by the company?

A. The main thing that the company wanted on strike procedure in there was over the grievances between their company and the union. They didn't want any more re-occurrences of what had happened in 1951.

Q. And what—that statement standing alone is meaningless. So, would you relate what occurred in 1951?

A. In 1951, there were some wage scales given to me by the company, and I had duplicates—had copies made of that, and I had took them out and gave them to each of the plant committee at the planing mill and at the sawmill. Then during the noon hour, or some time in the afternoon, or just as the whistle blew to go to work after dinner, a man handed one back to the plant committee, and the plant committee told the man to go back to work, and he hung it up on a nail.

In the meantime, a plant committeeman at the sawmill had posted one on the bulletin board. So, Orville Basset, the superintendent of the planing mill, saw this one hanging on a nail and tore it

(Testimony of Leland James Howden.)

down and went and talked to Mr. Hughes and called him on the phone.

Shortly thereafter, Mr. Hughes got a hold of me over the phone and arranged for a meeting [92] with me for the following Thursday, I believe, to discuss the matter of posting the wage scale.

Q. Well, to shorten it, was there a dispute—did a grievance arise by reason of this situation?

A. In the one plant, yes.

Q. And the employees at the plant attempted to effect a grievance by engaging in an unannounced strike action, is that correct?

A. Yes, without my knowledge.

Q. Now, at any time during those negotiation meetings between the local and the company representatives, in discussing Article II and IX, was there any reference made to wages in respect to the contentions advanced by the company?

A. Not as to this point. There was only one thing in the whole meetings that I can remember that wages was ever mentioned.

Q. Well, now, in attempting to persuade the union to adopt Articles II and IX, did the company make any reference to wages as being applicable to the provisions of Articles II and IX?

A. No, sir.

Q. In advancing the contentions of the company during those negotiations, were—how did the company refer to Article II and Article IX?

(Testimony of Leland James Howden.)

A. As grievances, like the strike in '51, the stoppage.

Q. In those discussions on those two articles in the course of negotiations, were references made to [93] the two articles separately or jointly?

A. Article II and Article IX usually in negotiations towards the last—they would go right through II and into IX. Towards the last, we were going through the whole contract, go through II and then later come into IX.

Q. Now, prior to April 1, 1954, did the union give the company a notice as provided for in Article XIII, the termination clause, of Appendix A to General Counsel's 2?

Mr. Morris: I think that calls for a conclusion. I suggest that he ask the question: What notice has been given?

Mr. Walker: Read the question, please.

(Question read.)

Mr. Walker: I'll revise it.

Q. (By Mr. Walker): With respect to the termination clause, Article XIII of Appendix A to General Counsel's Exhibit 2, between December, 1953, and April 1, 1954, did the union deliver anything to the company?

Mr. Morris: The same objection.

Trial Examiner: Objection overruled.

The Witness: We did not deliver anything, no, on the termination.

Q. (By Mr. Walker): At any time between December, 1953, and April 1, 1954, did the local take

(Testimony of Leland James Howden.)

any action under the termination clause with respect to the Giustina Company?

A. No, sir. [94]

* * * * *

Q. (By Mr. Walker): Now, does the local have collective bargaining agreements with employers other than Giustina? [96] A. Yes, sir.

Q. And with respect to those agreements, in the year 1954, did the local under the termination clause open the agreements for negotiations for modifications or changes of the contract?

Mr. Morris: Does my continuing objection of yesterday still continue as to this type of interrogation?

Trial Examiner: Now that you've mentioned it, it does.

Mr. Morris: Thank you.

Trial Examiner: For the record, the objection is overruled.

The Witness: We opened no contracts for changes.

Q. (By Mr. Walker): With respect to the agreements between the local and other operators, was any action taken pursuant to Article VIII, the wage clause?

A. The Council opened on wages with all employers. Some of them is not Article VIII. The Council opened on the locals' behalf.

Q. Now, as to those employers, the other employers, with whom the local has agreements, who

(Testimony of Leland James Howden.)

represented the local in those negotiations on wages?

A. The District Council negotiating committee.

Trial Examiner: Mr. Howden, just to clarify your previous response when you said that the Council opened on the locals' behalf with all the employers with whom you had contracts, but with some of them it was not Article VIII, am I correct in inferring that you meant to say that the [97] Council opened the wage issue with all employers with whom they had contracts, but that for some of those employers the particular clause in the contract, on which they reopened, was not Article VIII under their agreements?

The Witness: That's right, sir. [98]

* * * * *

Cross Examination * * * * *

Q. (By Mr. Morris): By what authority, Mr. Howden, did the District Council purport to act for the local unions in opening the contracts for negotiation?

A. Shall I report on another part of this? I think it's in here. Back years ago, in 1948, the District Council was given permanent authority to act on general wage raises for the local unions.

Q. How was that permanent authority recorded?

A. It was in writing.

Q. In writing? A. Yes.

Q. Did the local union take action to authorize that to be done? A. It did. [99]

* * * * *

(Testimony of Leland James Howden.)

Redirect Examination

Q. (By Mr. Walker): What was the issue involved in the industry-wide strike in 1945?

A. It's only on hearsay on that.

Q. Oh, if you don't know, all right. Now, did the grievance which occurred in 1951 arise over the posting of wage scales, or over the negotiation of wage scales?

A. The posting.

Mr. Walker: I have nothing further.

Mr. Morris: Nothing further.

Trial Examiner: Mr. Howden, you've indicated that you expect to check the union's records with respect to the type of action which the union took to give the Council authority to negotiate, and it may be that some of the questions that I have will be covered by your records. If so, you just advise me of that fact, and we'll defer the matter.

I'm interested in determining the manner in which that authority is actually conferred upon the Council or was conferred upon the Council. You testified that the local union took formal action to delegate to the Council the authority to negotiate certain things. [110]

* * * * *

Trial Examiner: Well, then, if the records would not show, what is your present recollection as to the areas within which the union remains free to negotiate?

* * * * *

The Witness: We have the right to negotiate on everything but wages. [113]

* * * * *

(Testimony of Leland James Howden.)

Q. (By Mr. Walker): Now, on June 20th, 1954, did you have occasion to meet with either of the Giustinas? A. I met with Nat Giustina.

Q. Where? A. At the company office.

Q. And was anyone else present? A. No.

Q. Anyone with you? A. No.

Q. Did you have a conversation with him?

A. Yes.

Q. And what was said by you?

A. I asked him if he wanted to make an offer on the wage issue, as a Council representative, and told him that, if he even made a half a cent offer, I'd turn it in, but he and I both knew it would be turned down. So, he may as well make it a nickel if he was making any kind of an offer.

Q. And did he reply?

A. He said, "There will be no offer."

Q. Was there anything else said then at that time between the two of you? [119]

A. I think something, "Well, I guess this is it then", or to that effect, and his reply was, "Well, I don't think you boys would do it."

Q. And did that conclude that conversation?

A. That is the essence of the conversation. [120]

* * * * *

Q. All right. Were there any other meetings of any nature between July 28th and August 10th?

A. Yes.

Q. When? A. August 1st and August 8th.

Q. And at either of those meetings, was there any formal union action taken with respect to the

(Testimony of Leland James Howden.)

events of July 28th as reflected in Paragraph XIII of General Counsel's Exhibit 2? XIII begins on Page 3 and, of course, continues through to the middle of Page 10. However, my question was just simply limited to the fact of the meeting of July 28th in the company shop.

A. There was some talk and formal action taken on August the 8th, which was a crew meeting of Giustina's members that were working inside and members working outside, who, by vote, agreed to go back in a group if they would go back under action of the local union, and I don't know exactly how that motion was made.

Q. All right. [129]

* * * * *

Recross Examination * * * * *

Q. (By Mr. Morris): Prior to the meeting of June 7th, did you not tell Mr. Hughes that, if the company attempted to negotiate the wage issue with you and the plant committee, it would force a strike?

* * * * *

The Witness: No.

Q. (By Mr. Morris): Is it not a fact, Mr. Howden, that you did make such a statement to Mr. Hughes within a few days after the meeting of June 7th in his office?

A. Not in those words.

Q. Well, what words did you use?

A. I stated that, if they persisted in trying to talk to the plant committee, when the Council had

(Testimony of Leland James Howden.)

the right of negotiation, that the machinery was set up and ready, and it might cause a strike prior to the deadline. [138]

* * * * *

Redirect Examination * * * * *

Trial Examiner: With relation to the meeting of August 31st, when, according to the stipulation, the Governors' proposals were presented to Giustina Brothers, can you give us any background information as to just exactly how that meeting was set up, at whose instance it was arranged, how it was arranged, and what understanding there was before the meeting was held as to what it would cover?

The Witness: My face would get red in one place.

Trial Examiner: Pardon?

The Witness: My face would be red in one place. The Council had gotten copies of the Governors' proposal in here on the afternoon of the 27th, which was Friday, I believe. I'm not too sure of that. August 27th was on Friday?

Trial Examiner: That's correct.

The Witness: We got the papers. We were told to go and secure the signatures of the operators on that. [142] * * * * *

ELDON KRAAL

having been previously sworn, resumed the stand:

Redirect Examination

Q. (By Mr. Walker): In the month of June,

(Testimony of Eldon Kraal.)

1954, how many operators were in contractual relations with locals affiliated with the Council?

A. Mr. Walker, I would have to answer your question from memory more or less, but I'd come pretty close.

Q. All right.

A. I couldn't testify as to the exact number, but I could make a close statement. I would say 79 or 80, somewhere around that.

Q. Now, of the number of 79 or 80 operators—strike that.

Were all of those 79 or 80 operators notified of the general wage demand at that time?

A. They had been all notified prior to that time.

Q. Of the 79 or 80 operators, prior to June 21, 1954, had any settled on the wage demand?

A. Prior to June 21?

Q. Yes.

A. Yes, sir, there was several of them that had settled.

Q. About how many?

A. I would say 30 or 32, along there, maybe more, maybe less.

Q. Now, of the remaining number of 79 or 80 operators, how many settled on the wage issue between the beginning of the strike and the Governors' proposal?

A. Well, making another estimate or a guess, I would say 20 some, maybe 23 or 25, along in there.

Q. Now, of the remaining number of 79 or 80

(Testimony of Eldon Kraal.)

[151] operators, were there any that settled after the Governors' proposal issued?

A. Yes, there was. The settlements that came after the Governors' proposal was settled on the basis of the proposal.

Q. And how many?

A. Well, the remaining number except one, whatever it is. I'm not good enough at mental arithmetic to remember. If I were to add it up, I would say it would be in the 20s perhaps.

Q. All right. Then who was the operator who never settled on wage issues either after the strike began or after the Governors' proposal issued?

A. Giustina Brothers Lumber Company. [152]

* * * * *

Recross Examination * * * * *

Q. (By Mr. Morris): Well, what is the relationship between the National Council and the District Council?

A. How it affects wages or wage issues, or do you mean all?

Q. I'm referring to negotiations, negotiation matters only, Mr. Kraal.

A. Well, I would say—I would answer that question by saying the Willamette Valley District Council is one of the District Councils who are affiliated with the Northwestern Council, Lumber and Sawmill Workers, and last year, 1954, and several years in the past, over-all wage questions, on those, the District Council—the Willamette Valley District Council and other District Councils have

(Testimony of Eldon Kraal.)

authorized the over-all wage negotiations to be coordinated through the Northwestern Council and [154] its Executive Committee, and in that coordination, the policy—some of the policy, at least, from time to time are made up—I'm talking of union policies.

Q. That's correct.

A. Union matters are made up and agreed upon. After these policies have been reached and agreed upon by District Councils, the procedure has been to make every effort to carry out successful negotiations on those policies.

Q. Was not that coordinating procedure followed in 1954, Mr. Kraal? A. Yes, it was.

Q. And was not the decision that after August 26th the settlements would be on the basis of the Governors' proposal, a coordinated policy decision by the National Council? A. Right.

* * * * *

DEAN E. SPARKS

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Walker): Will you state your name, please, Mr. Sparks? [155]

A. Dean E. Sparks.

Q. Did you work at the Giustina plant in 1954 up to the beginning of the strike on June 21?

A. Yes, I did.

(Testimony of Dean E. Sparks.)

Q. And between June 21 and July 28, what was your status? A. Well——

Q. Well, did you join the strike? A. Yes.

Q. Now, did you attend a union meeting on July 28th, a meeting of Local 2611? A. Yes.

Q. Did you remain at the meeting until it ended? A. Yes.

Q. At about what time did the meeting end, as near as you can now recall?

A. Oh, originally about 8:30.

Q. Pardon me? A. About 8:30.

Q. And following the conclusion of the meeting, what did you do immediately after the meeting?

A. Immediately after the meeting, we went down—we went out and down the street and into a beer joint there for a beer.

Q. You mentioned “we went down”. Who did you mean by “we”?

A. Well, there was myself, Johnny Zybach, [156] Louis Wright, Larry Keopke, and Orville Bloom.

Q. While you were in the—strike that.

Do you know a Clifford Johnson?

A. I do.

Q. While you were in the beer parlor, did you see Mr. Johnson? A. I did.

Q. And did he say—strike that.

At the beer parlor, were all of the men you mentioned grouped together? A. Yes, they were.

Q. While you were in the beer parlor, did Clif-

(Testimony of Dean E. Sparks.)

ford Johnson have a conversation with you—between you and the men?

Mr. Morris: May we have him identified?

Mr. Walker: Pardon?

Mr. Morris: May we have him identified?

Mr. Walker: Clifford Johnson?

Mr. Morris: Yes, sir.

Q. (By Mr. Walker): Was Clifford Johnson in the employ of the company prior to the strike of June 21? A. He was.

Q. And then from June 21 to July 28th, was he a striker? A. He was.

Q. Did you have a conversation with him at that time in the beer parlor? [157]

* * * * *

The Witness: I don't know if I said anything to him or not.

Q. (By Mr. Walker): Well, did Johnson say anything to the group of you? A. He did.

Q. And what was it he said to you?

* * * * *

The Witness: I heard Mr. Johnson say—he asked us as a group if we would like to attend a secret meeting that was being held in the Giustina Brothers machine shop.

Q. (By Mr. Walker): Now, is it your recollection whether Johnson at that time said anything about a secret meeting at the Giustina parking lot?

A. He may have mentioned the parking lot, but I do know that he said we were going to have it in the shop, machine shop. [158]

(Testimony of Dean E. Sparks.)

Q. Did you—and by “you”, I mean the group of you—go to that secret meeting at the Giustina shop? A. We did. [159]

* * * * *

G. LOUIS WRIGHT

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows: [191]

Direct Examination

Q. (By Mr. Walker): Will you state your full name, please? A. G. Louis Wright.

Q. And where do you live?

A. I live in Eugene.

Q. And prior to June 21, 1954, were you working at the Giustina plant? A. I was.

Q. In what capacity? A. My job?

Q. Yes.

A. I was driving carrier at the last.

Q. On June 21, 1954, did you join the strike?

A. I did.

Q. Did you attend a union meeting of Local 2611 on July 28th? A. I did.

Q. And after the meeting—strike that.

Were you present in the hearing room when Mr. Sparks testified? A. I was at all times.

Q. And are you here under subpoena from the Counsel for the General Counsel? A. I am.

Q. Now, after the union meeting, were you in the beer parlor with those individuals mentioned by Mr. Sparks? A. I was. [192]

(Testimony of G. Louis Wright.)

Q. And do you know Mr. Johnson? A. Yes.

Q. Did he come to you fellows in the beer parlor that night? A. He did.

Q. Did he say anything to you? A. Yes.

Q. What was it he said?

A. There was going to be a secret meeting out at Giustinas in the shop and, if we were interested in going back to work, to come on out.

Q. And following that, the five of you drove in your car to the end of First Street opposite the north end of the shop, is that correct? A. Yes.

* * * * *

Q. And after that car stopped, did you see somebody get out of it? A. I did.

Q. Was the individual who got out of it [193] walking in any peculiar manner, do you know?

A. One was.

Q. In what way? A. On crutches.

Q. All right. Now, did you notice that individual enter the shop?

A. I might not have noticed him enter the shop, but he was headed in that direction. [194]

* * * * *

ORVILLE BLOOM

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Walker): Will you state your name, please? A. Orville Bloom.

(Testimony of Orville Bloom.)

Q. And do you live in Eugene?

A. No. I live in Coburg.

Q. Where? A. In Coburg.

Q. Is that a suburb to Eugene?

A. That's right.

Q. Now, have you been present here when Mr. Sparks and Mr. Wright testified? A. Pardon?

Q. Were you here while Mr. Sparks and Mr. Wright testified? A. I was. [202]

Q. And did you hear their testimony?

A. I did.

Q. Are you here under subpoena issued by me?

A. I am.

Q. Did you work in the Giustina plant up until June 21, 1954? A. I did.

Q. And what was your job?

A. Planer feeder.

Q. On June 21, '54, did you go on strike?

A. Yes.

Q. And on June 28, 1954, did you attend a union meeting of Local 2611?

A. What was that?

Q. Did you attend a union meeting on July 28th? A. Yes.

Q. After the union meeting, you went to the beer parlor along with the other individuals identified by Mr. Sparks, is that correct?

A. That's right.

Q. And do you know Mr. Johnson?

A. I do.

(Testimony of Orville Bloom.)

Q. While you were there, did Mr. Johnson come up to the group? A. Yes.

Q. And did he say something to the group?

A. He did. [203]

Q. And what did he say?

A. He says, "You fellows going out to the meeting, the secret meeting?", and we says, well, we didn't know of any meeting. We asked him where it was at, and he told us.

Q. What did he say?

A. And he says, "You fellows want to come on out."

Q. Did he say where the meeting was to be?

A. Yes.

Q. Where? A. Giustina shop.

Q. Did he mention anything about the Giustina parking lot?

A. No, I don't believe he did, that I can remember.

Q. All right, and then the five of you went to the shop in Mr. Wright's car, is that right?

A. That's right. [204]

* * * * *

JOHNNY ZYBACH

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Walker): Your name is Johnny Zybach? A. Yes.

(Testimony of Johnny Zybach.)

Q. And you live in Eugene? A. Yes.

Q. Where are you—were you employed at the Giustina plant up till June 21st, 1954?

A. Yes.

Q. And what was your job?

A. Well, I had several of them. I was a carrier driver and I was tying some.

Q. Did you go on strike on June 21st?

A. Yes.

Q. And you attended a union meeting of Local 2611 on July 28th? A. Yes.

Q. And were you present here while Mr. Sparks, Mr. Bloom and Mr. Wright testified?

A. I was.

Q. Did you hear their testimony? A. Yes.

Q. Are you here under subpena?

A. Yes. [209]

A. At my request? A. Yes.

Q. Now, do you know Mr. Johnson?

A. Yes.

Q. What is your recollection of what Mr. Johnson said to you men at the beer parlor?

A. Well, he asked us if we was going to the meeting. We asked him what meeting—someone did, and he said, "The secret meeting at the shop."

Q. Did Mr. Johnson mention the meeting at the parking lot?

A. No. I believe the question came up: Which shop? What they meant by the shop? I think he said, "The one by the parking lot."

(Testimony of Johnny Zybach.)

Q. All right. About what time did you men arrive at the shop?

A. Oh, it was between 9:30 and — about 9:30 probably. [210]

* * * * *

Trial Examiner: Mr. Zybach, at the time that you and the other individuals in your car entered the shop, did you have occasion to observe whether there were other persons who came to the meeting after you did, or were you among the last ones to come?

The Witness: Well, we was among the last, but there was a few—two or three maybe—that come after we did. [215]

* * * * *

NATALE BERNARD GIUSTINA

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Morris): Your name, please?

A. Natale Bernard Giustina.

Q. You're the Nat Giustina that's been referred to in the testimony in this proceeding?

A. I am.

Q. What position do you hold with Giustina Brothers Lumber Co.?

A. I am President and General Manager.

Q. How long have you held that position?

A. Since July the 1st, 1948.

(Testimony of Natale Bernard Giustina.)

Q. And how long have you been employed by Respondent in this proceeding? [221]

A. Steadily since June, 1941, and intermittently since 1933. [222]

* * * * *

Q. Did the woods employees remain with 2574 until June 21, 1954? A. And still are.

Q. Will you describe the relationship between the company and 2611 from 1940-41, when you acquired knowledge of it, to June 21, 1954? That is, were you bickering constantly, or peaceful, or just what?

A. No. I think you'd say that the relationship has been very good over the years with the one exception of the so-called quickie strike in '51 over—I guess I can say—a misunderstanding of intent.

Q. How many grievance meetings would you say occurred between the end of the strike in 1945 and 1951?

A. There wouldn't be four to six a year on an average.

Q. How many between 1951 and June 21, 1954?

A. Again I am—this is—if I gave an answer, I mean I could not be sure. I know it's been on the increase, but still maybe not over one a month. That would be on the outside.

Q. Do you recall, Mr. Giustina, whether the company made proposals for contract changes in 1953? A. Yes.

Q. And what was your purpose in making those proposals? [223]

(Testimony of Natale Bernard Giustina.)

A. There were several things in the contract that we wanted changed so that we would eliminate a lot of misunderstanding that had caused some of our grievances in the past.

Q. Well, what were you trying to accomplish?

A. A better working relationship between the company and the employees.

Q. With reference to no strike action during the term of the contract, what was your purpose?

A. We wanted to stop these so-called quickie strikes like we'd had in '51.

Q. Referring to Exhibit A—pardon me—I think that's Appendix A in General Counsel's Exhibit No. 2, I call your attention to Articles I and II. Will you read those, please, and testify from the standpoint of Respondent what those articles were intended to accomplish?

A. Did you wish me to read Article I and II?

Q. Well, if you're familiar with them, no.

A. I mean, read them to myself?

Q. Yes, read them so you can answer the question. A. I'm ready for the question.

Mr. Morris: Will you read the question, please?

(Question read.)

The Witness: Well, Article I was intended to also show that the union had some responsibility in continued employment, good working conditions, and to see that the operation operated efficiently, [224] with good workmanship, and that we maintain good relations between the company, the em-

(Testimony of Natale Bernard Giustina.)

ployees, and the public—the consumer that used our product.

Mr. Walker: Just a moment. May I object? It appears to me the witness is reading the instrument, and the instrument, of course, speaks for itself.

Trial Examiner: Well, the answer on its face appears to be germane to the question. If that's the best answer the witness is capable of giving, the record will so show. I'll overrule the objection.

The Witness: Article II, which is under the plant committee, spells out what the plant committee is to do, spells out what a grievance is, which had always been a bone of contention before, puts some time limits on it, also spells out that a person who has a grievance must attend the meetings.

In other words, it was designed to try and clarify misunderstandings that we'd been having with the union over the past several years. [225]

* * * * *

Q. (By Mr. Morris): Was there a meeting held between representatives of the company and union representatives on June 7, 1954?

A. Yes, sir. * * * * * [228]

Q. Did the representatives of the company make any effort to discuss the wage proposal and problems involved in connection with it?

A. I think one of the first things that I asked them was if they were in to discuss the wages, and I was told "no", that they couldn't. I asked them why, and they said because their authority had

(Testimony of Natale Bernard Giustina.)

been given to the District Council, and then they added, "You can't negotiate," and I asked them what they meant I couldn't negotiate, and I was ready, willing and able to negotiate, and they says, "No, you've given your authority to the association, and there isn't anything you can do on it." [229] I said, "The hell I can't. The association doesn't tell me or any other operator what we have to do," and I repeated, "All I have to do is pick up the telephone and tell Mr. Metzger of the association that he no longer represents me, and that I am at this moment ready, willing and able to negotiate," if they wanted to talk.

Q. Was there a meeting on June 28th between representatives of the Respondent and the Local 2611?

A. Yes, there was.

Q. Where was that meeting held?

A. In our office.

Q. Who represented the company?

A. Mr. Ehrman Giustina, Mr. Sam Hughes, and myself.

Q. Who represented the union?

A. Mr. Howden and several members of the plant committee.

Q. Who called the meeting?

A. The company.

Q. And what was the purpose of the meeting?

A. The primary purpose of the meeting was—we had then been on strike for approximately a week. Our hospital coverage of the men, a prepaid monthly thing, was due, and we wanted to ask the

(Testimony of Natale Bernard Giustina.)

committee if they wanted the month of July hospital dues, if it was all right with them, if we withheld the hospital dues for the month of July out of their checks so that the men would be covered. [230]

Q. At that meeting, was there any discussion of the wage issue involved in the strike?

A. Yes, sir.

Q. What was that discussion?

A. It was very similar to the meeting of June the 7th, in which again we asked if they wanted to discuss the wages. They said, "Yes, make us an offer." I said, "I'll make you an offer. Wages and working conditions as they were when you went on strike." They said, "Well, we can't talk to you by authority of the District Council." [231]

* * * * *

Q. Has the night shift or a second shift been resumed since June 21, 1954?

A. No, sir. [233]

* * * * *

Q. Did you consider at that time, Mr. Giustina, the effect which the acquisition of Mount June would have upon the log supply available to you?

A. Yes, sir.

Q. And what effect would that have?

A. Well, we were in a position, if we exercised the option to purchase the company, whether or not we would run the Mount June mill, which would take additional logs, and, naturally, we couldn't. If we kept operating the mill, there was

(Testimony of Natale Bernard Giustina.)

no particular percentage in buying the timber. It would just take up that much more. We wanted the timber to extend the life of our present operations.

Q. Was consideration given to the effect that the acquisition and the operation of Mount June would have upon the continuance of the second shift? A. Yes, sir.

Q. And what was that consideration?

A. We knew that one way or another that the mill was going to have to be operated—— [234]

* * * * *

The Witness: We had known in the discussions that we had had with different people in regards to this mill, either we were going to have to operate it ourselves, or, if we leased it, we were going to have to furnish logs for it for a period of one or two years. That would at least be part of their logs. So, we knew that we were not going to have logs available for the second shift operation. [235]

* * * * *

Q. Upon exercise of the option to acquire Mount June, did you make any commitments as to supplying logs to the operation of the Mount June sawmill? A. Yes, we did.

Q. Is that commitment still in effect?

A. Yes, it is.

Q. Do you have any present plans to resume the operation of the second shift in the sawmill and planing mill? A. No, sir. [236]

* * * * *

(Testimony of Natale Bernard Giustina.)

Q. Now, with reference to the meeting of July 28th, how did you get there?

A. I beg your pardon?

Q. What means of transportation did you use to get to the meeting of July 28th?

A. I rode with my brother in his car, as I remember.

Q. What was your physical condition at that time?

A. I had a broken left knee cap, and I was on crutches and a cast—my left leg in a full cast.

Q. When you reached the shop, who went into the shop first among the three of you?

A. I can't recall who went in first.

Q. What was the physical condition of the shop with reference to benches, and so on?

A. Well, there were benches set up in the center or south central end of the shop, and the men were milling around. [242]

* * * * *

Q. I hand you General Counsel's Exhibit No. 2 and call your attention to—strike that, please.

I hand you a copy of the complaint and call your attention to Exhibit A of the complaint. [245]

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Q. (By Mr. Morris): Will you read it, please?

A. I have read it.

Q. Do you know whether a letter similar in content was sent to the woods employees of Gius-

(Testimony of Natale Bernard Giustina.)

tiana Brothers Lumber Company? A. Yes.

Q. Do you know when it was sent?

A. The following day.

Q. Do you know, Mr. Giustina, whether the letter, Exhibit A, was sent to the night shift men, who had been on the night shift prior to June 21?

A. Yes, I do.

Q. Was it sent? A. Yes.

Q. Why?

A. Well, we didn't want to get in any difficulty, not knowing whether or not the seniority would apply, how many men would return. There had been a good number of employees that terminated their employment during the strike, and not wanting to discriminate against any of them, we thought the best thing to do was to send the letter to everyone and see what happened from there.

Q. Referring to General Counsel's Exhibit [246] No. 2, Appendix K, were you familiar with the content of that letter? A. Yes.

Q. I see that you signed it. A. Yes.

Q. Did you discuss the position of the company in regard to that letter with Ehrman Giustina and Sam Hughes before it was sent?

A. Yes, I did.

Q. And what were the reasons for sending that letter?

A. Well, things were kind of in a jumbled mess, as I remember. The men had come through the picket line. There had been a petition for decertification. We felt that to get the air clear and try

(Testimony of Natale Bernard Giustina.)

and find out where we were, why, we sent this.

Q. Was any consideration given to the strike by 2611 as a breach of the contract in connection with sending that letter? A. Yes.

Mr. Richardson: I object to that. The witness has answered the question and given us reasons already.

Mr. Morris: No; this is a different question. You must have misunderstood it.

Trial Examiner: I'll sustain the objection.

Mr. Morris: I'll certainly take an exception to that.

Trial Examiner: I may say it's based upon its leading character.

Mr. Morris: I was trying to identify the [247] subject matter. I didn't forecast an answer. I asked if consideration was given.

Trial Examiner: My ruling stands. You're at liberty to pursue the subject matter of the question, however, by some other question.

Q. (By Mr. Morris): Were any other matters given consideration in connection with the letter of September 2, Appendix K? A. Yes, sir.

Q. What other matters?

A. The fact that the local gave consideration that we had broken the contract. [248]

* * * * *

Q. Page 11, Paragraph XVII. You will note several statements by Mr. Hughes with reference to what was said at that meeting. Will you read those, please, and state whether they correctly set

(Testimony of Natale Bernard Giustina.)

forth the position of the company at that time?

* * * * * [251]

The Witness: Yes, they do.

Q. (By Mr. Morris): What were the reasons [252] for taking that position, Mr. Giustina?

A. Well, in discussing it with Mr. Hughes prior to the meeting, it was our understanding that, because the bargaining unit had been questioned, that he could not negotiate with that said unit.

Trial Examiner: Just a moment. I want to get one thing clear. When you used the words "bargaining unit", Mr. Giustina, you're using the word that has a special meaning in this field. Did you mean that there had been a question raised as to the group of employees for which the union might bargain, or did you mean a question had been raised with respect to the right of the union to speak for a particular group of employees?

The Witness: The latter, I would say, sir?

Trial Examiner: So, would I be correct, gentlemen, in assuming that the witness intended to speak of a question being raised as to the bargaining agency, rather than the bargaining unit?

Mr. Morris: That is a more correct expression.

The Witness: Yes.

Trial Examiner: Very well.

Q. (By Mr. Morris): Mr. Giustina, bearing in mind the date August 31, 1954, to your knowledge has any representative of Local 2611 requested a meeting with Giustina Brothers to negotiate any matter? A. No, sir. [253]

* * * * *

(Testimony of Natale Bernard Giustina.)

Q. Calling your attention, Mr. Giustina, to the topic of meetings of groups of employees at the shop or elsewhere on company property, state whether or not such meetings were held prior to July 28th, 1954? A. Yes, they were.

Q. Were company representatives always in attendance at such meetings? A. No, sir.

Q. Would you have any way of knowing why the meetings were being held, for what purpose?

A. Well, it's kind of a difficult one to answer in some respects because—to pinpoint it exactly—the shop has always been used, as long as I can remember, for employee meetings of different types.

Now, there have been grading schools, which have been mentioned earlier. There have been safety meetings and first aid classes. I can remember several instances when the men have asked to use the shop as a meeting place, when maybe somebody's house burned down or somebody's wife was sick and they wanted to raise some money amongst the crew to help the fellow out.

Q. Can you recall of an instance when the company refused to permit a meeting of a group of employees in the shop? A. No, sir. [257]

Mr. Morris: Your witness.

Cross Examination

* * * * *

Q. (By Mr. Walker): Now, such meetings as occurred at the shop as first aid, safety, grading school, those were all called by the company, were they not? A. Usually, yes.

(Testimony of Natale Bernard Giustina.)

Q. And the other meetings where permission to use the shop by a group of employees was not refused in instances of collecting some money for benefit of somebody's wife, permission was always sought of the company in advance, was it not? [258]

A. Normally, yes. * * * * * [259]

Q. (By Mr. Richardson): Now, at any time prior to the trial of this case, this hearing, were you—had you notified Mr. Howden or any other representative of the union or the Council that the strike was a breach of the collective bargaining agreement? [260]

A. Would you repeat that question, please?

Mr. Richardson: Would you read the question, please?

(Question read.)

Mr. Morris: When you say "you", do you mean Mr. Giustina personally?

Mr. Richardson: I'll restrict this question to Mr. Giustina personally.

The Witness: No, I had not.

Q. (By Mr. Richardson): And to your knowledge, has any other management representative of your company, prior to this hearing, notified any representatives of the union or the Council that the strike commencing June 21, 1954, was a breach of the collective bargaining agreement?

A. Not in those words.

Q. In any words?

A. I think that the letter of September the 2nd speaks generally along those lines.

(Testimony of Natale Bernard Giustina.)

Q. I don't argue with you, Mr. Giustina. The letter of September the 2nd speaks for itself.

A. I mean, other than the letter of September the 2nd, I don't know.

Q. I see. That would be the extent of it, the letter of September 2, 1954?

A. As far as my knowledge goes. [261]

* * * * *

Q. In other words, when the second shift was discontinued then, it would only be those employees who did not have sufficient seniority to displace new employees on the day shift, who would be completely terminated?

A. Along with knowledge, training, skill and ability, that is correct. [263]

* * * * *

Trial Examiner: What was the situation with respect to log supply thereafter? In other words, thinking now of the period from June 21st, 1954, up until the acquisition of the Mount June property, what was the situation with respect to log supply? Did your own woods operations begin?

The Witness: We had purchased a Government sale of some 20 million feet that we had hoped to log in the fall and winter of '54 and the first of '55. Due to the strike, we were unable to build the bridges and roads necessary because we lost those two good months in there.

Therefore, that source of supply was practically negligible. We got a few logs, but very little. We're still not getting them. [271]

* * * * *

(Testimony of Natale Bernard Giustina.)

Trial Examiner: Then what was the situation with respect to log supply during the late summer and fall of 1954? Where were you getting logs?

The Witness: Just about all over.

* * * * *

Trial Examiner: How successful were those efforts in terms of accumulation of a log supply? In other words, what level of supply were you able to build up at the log dump, pond, and elsewhere?

The Witness: As I remember, we got up to about a couple months' inventory ahead.

Trial Examiner: When did you reach that level?

The Witness: About January 1st. That's the date we try to hit, as I said, usually two and a half to three months. This year we had two months.

* * * * *

Trial Examiner: When did you begin to derive a log supply for use either at the Mount June mill or elsewhere from the Mount June timber properties?

The Witness: Immediately.

Trial Examiner: Immediately. Now, you gave testimony to the effect that you had certain commitments with respect to the operation of the Mount June mill, and some of the timber derived from the Mount June woods supply was to be diverted to the operation of the Mount June mill. Do I correctly understand that?

The Witness: Not necessarily; not necessarily timber from the Mount June lands—just timber supply, we were obligated on.

(Testimony of Natale Bernard Giustina.)

Trial Examiner: Very well. My next question then is whether the immediate derivation of timber supplies from the Mount June lands enabled—was [273] a factor enabling you to build up a log supply at your log dump and pond in Springfield to the extent you previously indicated? In other words, did timber from the Mount June lands come into the log dump and pond here for the use of your sawmill and planing mill at Eugene?

The Witness: Yes. However, the greatest advantage has been since the first of the year because of the amount of roads that are in the area, and we've been able to go in and get logs out during this unusual wet weather we've had up until the last couple weeks.

* * * * *

Redirect Examination

Q. (By Mr. Morris): With reference to the 1954 second shift at the sawmill, Mr. Giustina, would you characterize that shift as temporary or permanent?

A. Well, the second shift is always—has always been a temporary shift in our operation. [274]

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EHRMAN V. GIUSTINA

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Morris): Your name, please?

A. Ehrman V. Giustina.

(Testimony of Ehrman V. Giustina.)

Q. And how do you spell Ehrman?

A. E-h-r-m-a-n?

Q. You're employed by Giustina Brothers Lumber Co., the Respondent in this case?

A. Yes, sir.

Q. In what capacity?

A. Production and Operation Manager.

Q. How long have you been so employed?

A. I've held that position since 1948.

Q. You're a brother of Nat Giustina, who just testified? A. Yes, sir.

Q. And you're the individual who has been referred to throughout quite a bit of the testimony as Ehrman? A. That's right. * * * * * [279]

Mr. Morris: Now, I would like to ask the general question here if he will testify the same as Mr. Nat Giustina as to the Mount June Forest Products option, what was done on it in its exercise.

* * * * *

Q. (By Mr. Morris): You heard Mr. Nat Giustina's testimony as to the option, the cruise, the exercise of the option. If you were asked the specific questions, would your answers be substantially the same? A. Yes, sir.

Q. Reference has been made to a meeting of June 7, 1954, Mr. Giustina. Were you present?

A. Yes, I believe it was June 7th, a date right near the first of June.

Q. Who else was present, first, for the company?

(Testimony of Ehrman V. Giustina.)

A. If this was the last meeting before the strike, there was present Nat Giustina, Mr. Sam Hughes, and myself.

Q. Who was present for Local 2611?

A. There was Mr. Howden and a committee which was composed of a grader named Carlson, I think Iley Casteel, Hatton, and there was two or three other men there, but I don't recall [281] right offhand.

* * * * *

Q. Were you present at the meeting of June 28th, 1954? A. Yes, I was. [283]

* * * * *

Q. Well, will you just state for the record, please, as best you can recall, what was mentioned during the meeting by the various people?

A. Nat asked them if they wanted to negotiate on the strike, or how the strike situation was. I believe it was Howden that answered, "Well, you can make us an offer, but we can't do anything about it." Nat then said, "We'll go back to work with the same wages and working conditions as they were when we left." That was about the essence of the conversation.

Q. Were you present at the meeting of July 28th at the shop? A. Yes, I was.

Q. How did you get there?

A. I drove over in my car.

Q. Did anyone go with you?

A. Yes, Nat and Sam rode over with me.

Q. What was Nat's physical condition?

(Testimony of Ehrman V. Giustina.)

A. He had a broken left knee cap at the time, was in a cast, and was wearing crutches. [284]

* * * * *

Q. With reference to benches, what was the physical setup within the shop? Were there any?

A. Well, there was a big tractor sitting over in the corner, and this side of it was a bunch of blocks of wood and planks laid across these, and several men seated and some standing. It looked as if there had been a group of people there for some time.

* * * * *

Q. Were you present at the meeting of August 31? A. I was.

Q. Had you and Sam and Nat discussed the position of the company with reference to that meeting in advance? A. We did.

Q. And what were the reasons for the position taken by the company as you recall them, of course?

A. The reasons taken at this meeting?

Q. Yes. If you don't recall them, just say so.

A. No, I don't recall them now.

Trial Examiner: You're welcome to look at the exhibit with [288] respect to the meeting to see if it refreshes your recollection.

Q. (By Mr. Morris): I think it's Paragraph XVII, Page 11. A. Yes.

Q. After reading that paragraph, is your memory refreshed as to the reasons, Mr. Giustina?

A. Right. There was a question on whether the—a question arose on the status of the union as the

(Testimony of Ehrman V. Giustina.)

bargaining agent, and, as long as that was in doubt, there was nothing we could do. [289]

* * * * *

After July 29, what segment of your mill operations first got under way?

A. Was July the 29th the date the boys went back to work, to clear myself on that?

Mr. Morris: The meeting was July 28th.

The Witness: They went back the next?

Q. (By Mr. Walker): Yes.

A. We ran the resaw end of the plant and loaded cars.

Q. Now, that's the planer department, isn't it?

A. No, sir.

Q. Then when did you, following July 29, when did you put the sawmill into operation?

A. A part of the sawmill started July 29th, sir, the resaw department.

Q. That's the resaw?

A. Yes, sir, that's part of the sawmill.

Q. Well, how many men does it take to run the resaw part of the mill?

A. About eight less than to run the complete plant.

Q. And then when did you—how many?

A. About eight.

Q. Less than a full mill complement?

A. Yes, sir, we had about 30 men there.

Q. You had 30 men where? [295]

A. Excuse me, sir. We had 41 men to run the

(Testimony of Ehrman V. Giustina.)

sawmill. We had about 30 men working, or 32 men working in the sawmill department on the 29th.

Q. When you say the sawmill department, are you including the loading crew? A. No, sir.

Q. All right. Then by what date did you get the full sawmill in operation?

A. The headrig started, sir, about 10 days to two weeks later.

Q. And then when did you get the planing mill in operation?

A. Basically, about the same time. It had run a little bit before. [296]

* * * * *

Cross Examination * * * * *

Q. (By Mr. Walker): Now, with respect to the meeting of July 28th at the shop, after you and Mr. Hughes and your brother arrived and were standing over by Mr. Hurd's office, and before the group of men assembled in the south central area of the shop, had you noticed the men were carrying benches over there to that south central area? [300]

A. Sir, we were not standing next to Mr. Hurd's office, Number 1, and Number 2, the plant was—I should say—the shop was set up with benches, and there was quite a cloud of smoke inside the shop.

Q. Well, are you saying that the benches were not carried over to the south central area while you were in the shop? A. No, sir.

* * * * *

(Testimony of Ehrman V. Giustina.)

The Witness: Excuse me. The benches were set up when we entered the shop. Does that answer it?

* * * * *

Q. (By Mr. Richardson): Mr. Giustina, with reference again to the July 28th meeting, you testified, I believe, that you and your brother, Nat, and Mr. Hughes arrived in your car. What is the make and model?

A. What meeting are you speaking of?

Q. July 28th, 1954. A. All right, sir.

* * * * *

A. What do you mean by that?

Q. I mean: Just what was the occasion?

A. Why we came there? [305]

Q. Yes. Why you got in your car and started out?

A. We had a phone call from Mr. Hughes.

Q. You received a phone call?

A. From Mr. Hughes.

* * * * *

Q. And where were you at that time?

A. At a private home.

Q. Your own? A. No, sir.

Q. Your brother's?

A. No, sir; a party. [306]

* * * * *

Q. (By Mr. Richardson): Mr. Giustina, referring again to the [309] consultation among the three representatives prior to the—the three representatives of the company prior to August 31, 1954,

(Testimony of Ehrman V. Giustina.)

meeting, what was the decision of those representatives with respect to the Governors' proposal that had just shortly prior thereto been announced?

* * * * *

The Witness: The status of the union was in question at that time, and we didn't feel that we should bargain with them. [310]

* * * * *

Trial Examiner: I have one problem that I wanted to explore very briefly, Mr. Giustina. I believe your testimony is that the night shift that was in operation just before the strike had been instituted some time in May, 1954?

(Testimony of Ehrman V. Giustina.)

The Witness: I think it was the latter part of April, as [312] I recall.

Trial Examiner: The latter part of April?

The Witness: I think so. Don't hold me to it.

Trial Examiner: Was that decision to institute the night shift a decision reached by the company management independently of consultation with any other persons?

The Witness: That was reached, sir — we had gone through the winter in good shape and come into the spring with a surplus of logs, and, if we see that we have three months supply of logs on hand or more extra, we will start the shift for that period of time, and that's what the situation was then.

Trial Examiner: So, that was a company decision based upon those considerations you just outlined?

The Witness: That's right. [313]

* * * * *

LELAND JAMES HOWDEN

having been previously sworn, resumed the stand:

Recross Examination

[320]

* * * * *

Mr. Morris: I propose a stipulation that the minutes of the meeting held February 4, 1948, of Local 2611, Lumber and Sawmill Workers Union, AFL, contain the following — will you read it, please, Mr. Howden?

The Witness: Motion made and seconded and

(Testimony of Leland James Howden.)

carried to have the Secretary write the Willamette Valley District Council, notifying them to continue negotiating with the operators for more wage increase.

Q. (By Mr. Morris): That's the end of the action taken? A. There was another motion.

Q. In regard to this subject matter, Mr. Howden? A. Unless you want me to read this.

Mr. Richardson: I think it should be read.

The Witness: Delegates to the Willamette Valley District Council were instructed to vote for strike if same came to a vote.

Mr. Richardson: I think another excerpt should be read, these few lines here, Mr. Morris.

Mr. Morris: I have no objection. [321]

Mr. Richardson: And that the stipulation include the portion of the minutes which Mr. Howden is about to read precedes the portion that he has already read.

Mr. Morris: So stipulated.

The Witness: Motion, seconded and carried to accept the seven and one-half cents per hour raise across the board.

Mr. Morris: Thank you.

Trial Examiner: Do you join in that stipulation, Mr. Walker?

Mr. Walker: So stipulated.

Trial Examiner: It's so stipulated that the union minutes read as just read for the record?

Mr. Walker: So stipulated.

Trial Examiner: Very well, the stipulation is received for the record. [322]

* * * * *

SAM E. HUGHES

a witness called by and on behalf of the Respondent, having been previously sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Morris): You have already been sworn, Mr. Hughes, and you have testified earlier in this cause? A. Yes. [325]

* * * * *

Q. Since August 31 of 1954, Mr. Hughes, has there been any request made by anyone claiming to represent the employees in the sawmill, planer and log pond, to engage in collective [327] bargaining?

A. Not that I know of, sir.

Q. Did you attend the meeting of June 7th, 1954? A. Yes, sir. [328]

* * * * *

Q. Does that complete what you recall?

A. Mr. Giustina made no further comments on that line that I can recall at this time. Mr. Howden made a comment.

Q. What was his comment?

A. I can't recall it verbatim, but my recollection is that it was to the effect that negotiations by the plant committees, those persons who were present, on the wage issue could not be undertaken.

Q. After the meeting of June 7th, did you have

(Testimony of Sam E. Hughes.)

a meeting with Mr. Howden at which there was some mention made of the ability of either party to negotiate the wage issue?

A. I will again refer to the calendar which I have before me. There was another meeting at which Mr. Howden and myself discussed the matter.

Q. Who was present at this meeting to which you refer?

A. Mr. Howden and myself.

* * * * *

Q. When did it take place?

A. On June the 11th, 1954.

Q. Will you state, as best you can, what was said and by whom at that meeting?

A. I asked Mr. Howden if there were any pending grievances [330] which had not been resolved, or which were not adequately taken care of at that time. He told me that there were not. I further asked Mr. Howden if it was true that they could not negotiate with us because their authority had been given away. Mr. Howden replied in the affirmative that they could not negotiate with us.

He further related that, after the meeting on June the 7th, upon return to his home, as I recall he stated his home, he had had a phone call from the District Council. In the phone call, he was asked if we had attempted to negotiate with the plant committees. He told them, no, we had not negotiated on the wage issue.

As I recall, he stated that he was thereupon told

(Testimony of Sam E. Hughes.)

that it was a good thing because, if we had, we would have been on strike the next day. [331]

* * * * *

Q. Now, with reference to the meeting of June 28th, Mr. Hughes, were the persons who previously have been identified present at that meeting?

A. As far as I recollect, yes, sir. [332]

* * * * *

Q. What was the discussion with reference to the wage and strike situation at that meeting?

A. As I recall, Mr. Howden made a statement that he would be willing to take an offer to the District Council. Mr. Nat Giustina indicated that there would be no offer, other than a statement that we were ready and willing to go back to work on the wages and working conditions in effect at the commencement of the work stoppage.

Q. Was there any response to that from Mr. Howden or other union representatives there?

A. Mr. Howden indicated, as I recall it, that would not be acceptable to the District Council. They would not allow any such settlement.

Q. Now, with reference to the meeting of July 28th, 1954, Mr. Hughes, did you receive a telephone call the night of July 28th? A. I did.

Q. Where were you? A. At my home.

Q. Do you know or do you recall who called you? A. I do.

Q. Who telephoned you?

A. A man whose name was Robertson, as I recall.

(Testimony of Sam E. Hughes.)

Q. Is Robertson an employee of Giustina Brothers? [333]

A. He had been and he was at that time as far as I know.

Q. And what was the conversation with him over the telephone?

A. He indicated that there was a group of men who wanted to talk to someone from the company. I heard something about bitches. I asked if it was their desire to talk to me. I was told that it was. I asked if it was permissible to bring anyone else along. I was told that it was.

Whereupon, I stated that it would be a few minutes before I would be out.

Q. Did he tell you where the meeting was?

A. As I recall, he did, yes, sir.

Q. Where did he say it was?

A. At the shop.

Q. Did you raise any objection—pardon me—that's covered by the stipulation.

What did you do after the conclusion of the telephone call with Mr. Robertson?

A. Well, the first thing I did was, as I recall—

Q. I'm not asking you if you brushed your teeth. Did you make a telephone call?

A. I was just going to say that I took my pajamas off and put my clothes on, which is what I did, as I recall. I didn't brush my teeth. Yes, I made another telephone call.

Q. And to whom did you call?

A. I called the home of Ehrman Giustina. [334]

(Testimony of Sam E. Hughes.)

Q. Did you reach him there? A. No, sir.

Q. Were you given any information on your call to Mr. Ehrman Giustina's home as to where you could reach him? A. I was.

Q. And what did you do then?

A. I tried to reach him at the place where I had been informed he could be reached.

Q. Were you successful? A. I was.

Q. As a result of these telephone calls, did you go to the plant of Giustina Brothers?

A. I did.

Q. Where did you go in the plant?

A. I went to the main office, which is located on or near Second and Garfield.

Q. Ultimately you went from there to the shop?

A. I did.

Q. How did you get there?

A. As I recall, I rode in a car.

Q. Whose car?

A. As I recall, that of Ehrman Giustina's.

Q. Anyone else in the car? A. There was.

Q. Who? [335]

A. His brother, Nat Giustina.

Q. You attended the meeting, Mr. Hughes. That's not a question. When you got to the shop, did you go into the shop? A. I did.

Q. What was the appearance within the shop as you entered?

A. There were a considerable number of persons in the shop. As I recall, I entered through the small door of the shop located near the west

(Testimony of Sam E. Hughes.)

side in the lean-to which I previously described. I walked toward the rear of the shop where there were a group of men. It seemed to be a larger number of men than there was any place else.

There was talk. Men were smoking. There were pieces of equipment in the shop, tools, all the rest of the material that was ordinarily found there.

* * * * * [336]

Trial Examiner: Why was the week of August 8th, 1954, selected as a date for reference in the heading of Respondent's Exhibit 6?

The Witness: That was, as I recall, selected because of a request made by Mr. Walker for certain information, the commencement of operations in the sawmill on a full schedule having resumed in the week of August the 8th. August the 8th, as I recall, was a Sunday; August the 9th was a Monday, and on that date, to which reference is made in the complaint, the sawmill operation was back in full production—or full operating capacity, I should say.

Trial Examiner: You had a sufficient crew to maintain what you describe as full operating capacity?

The Witness: Yes, sir.

* * * * * [367]

(Testimony of Sam E. Hughes.)

Cross Examination * * * * *

Q. (By Mr. Walker): Now, relating to the evening of July 28th, what time did you receive that telephone call from Mr. Robertson?

A. Well, it was late in the evening. As I said, I was practically prepared to go to bed. My usual bedtime is after 9:30. So, I would say that it was after 9:30 at the earliest and it could have been close to 10 o'clock or 10:15, but I couldn't say the exact time.

Q. Now, when Mr. Robertson, in talking to you on the phone, said he wanted you to come down to the plant, that there was a group of men there who wanted to talk to the company, did you ask him what the group of men wanted to talk to you about?

A. I believe I mentioned that I caught the word "bitches" spoken over the phone. I couldn't tell you whether that was Mr. Robertson who stated it, or whether it was someone who was nearby. I did hear other persons in the immediate area and that term or that word is one that is customarily applied to matters that are in controversy, as con-

(Testimony of Sam E. Hughes.)

trusted to—well, the dictionary meaning of the word.

Q. Well, what matters were in controversy at that time?

A. Well, I imagine the biggest thing that was uppermost in the minds of a lot of the men was how much longer the strike was going to last.

* * * * * [386]

Q. When did you first learn that there was a group of men gathered at the shop?

A. On the evening of July the 28th, 1954.

Q. No time prior to that? A. No.

Q. When did you learn that there were a group of men who were interested in going back to work?

A. On the 21st of June, 1954. * * * * * [390]

Q. When did you first receive the original of Respondent's Exhibit 4, or your copy of Respondent's Exhibit 4?

A. I couldn't tell you the exact date. However, I think I could tie it down to an exact date that you could ascertain.

Q. Well, what's your present recollection?

A. My present recollection is that I saw this at a meeting called on the instance and behalf of Mr. Rodney Tunks of the NLRB. He was investigating certain matters then before the Board. The signed copy, from which I assume this came, as I recall, was present at that meeting. * * * * *

Q. (By Mr. Richardson): Your answer is that your recollection is there was no request to bargain between August 31, '54, and January 8th, '55?

(Testimony of Sam E. Hughes.)

A. That is correct.

Q. And then none again after January 8th, 1955, until January 19th, 1955?

Mr. Morris: He said "between." He didn't say "until."

Q. (By Mr. Richardson): Between January 8th and 19th, is that correct?

A. That's my recollection. * * * * * [404]

LELAND JAMES HOWDEN

a witness called in rebuttal by and on behalf of the General Counsel, having been previously sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Walker): Mr. Howden, were you present in the hearing room during the time Mr. Nat Giustina testified this morning? [409]

A. I was.

Q. I call your attention to testimony of Mr. Giustina to the effect that on a meeting at the company office on June the 28th, Mr. Giustina testified that he asked you if you considered the contract, which is Appendix A to General Counsel's Exhibit 2, was broken? A. He asked that?

Q. Did he say—did he ask you such a question?

A. No.

Q. Mr. Giustina testified further that, after asking the question as testified to by him, that your answer to it was "No." Was that your reply to such a question?

(Testimony of Leland James Howden.)

A. There was no question. I did not answer so.

Q. At that meeting of July 28th, what did Mr. Giustina ask you with respect to the status of the contract?

A. May I qualify my statement by explaining when it happened?

Q. All right.

A. As the meeting broke up over the negotiations of this deduction of two months hospital dues, or hospital dues for the month of July, as it broke up and I was on my feet and almost out the door leaving the room, Mr. Nat Giustina asked me, "Jim, is the contract in force?," and I answered, "Yes," and then he said, "We just wanted to know your opinion."

Mr. Walker: Nothing more. * * * * * [410]

Certificate

This is to certify that the attached proceedings before the National Labor Relations Board for the 19th Region in the matter of Giustina Bros. Lumber Co. and Local 2611, Lumber and Sawmill Workers, AFL, Case No. 36-CA-633, Eugene, Oregon, May 9-11, 1955, were had as therein appears, and that this is the original transcript thereof for the files of the Board.

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